89-823

No.____

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1989

DONALD M. LAYNE AND LAURA J. LAYNE, Petitioners,

v.

COUNTY OF SAN MATEO, STATE OF CALIFORNIA,

AND CALIFORNIA COASTAL COMMISSION, Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE CALIFORNIA COURT OF APPEAL, FIRST APPELLATE DISTRICT, DIVISION 3

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November 17, 1989

QUESTIONS PRESENTED

1. Whether the State of California violates petitioner's rights under the Fifth and Fourteenth Amendments of the Constitution of the United States to receive just compensation for an alleged regulatory taking of their property by requiring petitioners to make and complete futile and legally impossible applications for development as a precondition to maintaining an inverse condemnation action for damages for said taking.

2. Whether section 30103 of the California Public Resources Code, purporting to define the California Coastal Zone, is violative of the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States as being void for vagueness, when applied to real property which is not within the coastal

zone as described in the words of the statute but which is within the coastal zone as graphically described in a map incorporated by reference by said statute.

3. Whether San Mateo County initiative Measure A[1] is violative of the Equal Protection of the Laws Clause of the Fourteenth Amendment of the Constitution of the United States because of its requirement that a countywide election be held to amend the county's general land use plan only in matters involving coastal landowners.

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[1]Enacted Nov.4, 1986. Initiative Measure A reenacted or changed 37 policies of the Local Coastal Plan portion of the county's general plan and removed the power of the County Board of Supervisors to revise or repeal the Measure without a countywide election.

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TABLE OF AUTHORITIES

Cases:

Treatises:

OPINIONS BELOW

The unreported opinion of the California Court of Appeal was filed May 30, 1989 and appears in the appendix hereto. A rehearing was denied June 29, 1989. The California Supreme Court denied the Petition for Review on August 23, 1989. No opinions were prepared or filed respecting the denial of rehearing or the Petition for Review.

JURISDICTION

Donald M. Layne and Laura J. Layne, the petitioners, appeal from the final judgment of the Court of Appeal of the State of California, dated May 30, 1989, holding:

1. That petitioners were not entitled to just compensation as afforded by the Fifth and Fourteenth Amendments of the Constitution of the United States upon the

grounds that their claim was not ripe.

2. That §30103 of the California Public Resources Code does not violate the Due Process Clause of the Fourteenth Amendment of the Constitution of the United States in that it is not unconstitutionally vague or ambiguous.

3. That petitioner's claim that Initiative Measure A of San Mateo County denied them the equal protection of the laws as afforded them by the Fourteenth Amendment of the Constitution of the United States did not present a justiciable controversy.

This Petition is being docketed in this Court within 90 days from the denial of review by the California Supreme Court. The jurisdiction of this Court is invoked under 28 U.S.C. §1257(2,3).

CONSTITUTIONAL PROVISIONS AND RULES

Fourteenth Amendment, United States Constitution:

> §1. . . . nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Fifth Amendment, United States Constitution:

> . . . nor shall private property be taken for public use, without just compensation.

§30103 California Public Resources Code:

> Coastal Zone
> (a) "Coastal zone" means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of 1975-76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline parallelling the sea or five miles from the mean high tide line of the sea, whichever is less,. . .

§17 California Statutes 1976, chapter 1330,

as amended by Statutes 1976, chapter 1331 §29:

> The coastal zone, as generally defined in Section 30103 of the Public Resources Code, shall include the land and water areas as shown on the map prepared by the California Coastal Zone Conservation Commission titled "California Coastal Zone" dated August 11, 1976, and on file with the Secretary of State.

Measure A is reproduced in the Appendix.

HOW THE FEDERAL QUESTIONS WERE RAISED

The federal questions as to each of the three separate questions presented herein were raised as follows:

1. The federal questions regarding inverse condemnation and petitioner's rights under the Fifth and Fourteenth Amendments of the Constitution of the United States are raised in the trial court in the briefs submitted in support of and in opposition to respondent's motions for summary judgment. In particular,

petitioner's brief in the trial court states:

> It (the first cause of action) is an action for money damages as "just compensation" for the taking of substantial amounts of plaintiff's ownership rights for public use under both the U.S. and State Constitutions.

A 12 page discussion of the leading regulatory takings cases which have come before this Court in recent years follows in said brief. The arguments were amplified in the petitioner's briefs to the California Court of Appeal and to the California Supreme Court. The opinion of the Court of Appeal holds that petitioner's takings claim was not ripe.

2. The question whether §30103 of the California Public Resources Code was void for vagueness under the U.S. Constitution was initially raised in the petitioner's complaint. Paragraph 17 of the complaint states that the patent ambiguity and

vagueness of §30103 (if the line on the maps is held to be law) will violate the Fifth and Fourteenth Amendments of the Constitution of the United States. Petitioner's memorandum of authorities submitted to the trial court devotes five pages to the void for vagueness constitutional argument. The same arguments were presented to the Court of Appeal and to the California Supreme Court. The opinion of the Court of Appeal mentions the vagueness argument and then states:

> . . . we find the meaning of the statute to be clear and unambiguous, . . .

3. The complaint states that Measure A violates due process of law as afforded by the Fifth and Fourteenth Amendments of the Constitution of the United States. The memorandum of authorities submitted to the trial court states:

> Measure A also violates the Constitution

of the United States in that it denies to property owners in the coastal zone the equal protection of the laws.

The brief goes on to argue that Measure A inflicts mob rule on a few coastal landowners and that there is no rational basis for the classification. The equal protection argument was repeated and amplified in the briefs submitted to the Court of Appeal and the Supreme Court. The opinion of the Court of Appeal fails to even mention equal protection and states that the cause of action challenging Measure A was not ripe.

STATEMENT OF THE CASE

On June 9, 1987, this Court decided the case of First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, (107 S.Ct. 2378). The complaint in the case at bar was filed

July 29, 1987 in reliance on said decision. The complaint states three causes of action.

The first cause of action is in inverse condemnation for an alleged regulatory taking.

The second cause of action seeks a declaration that petitioner's property is not within the California Coastal Zone, or that §30103 California Public Resources Code defining the Coastal Zone is void for vagueness.

The third cause of action seeks a declaration that San Mateo County Initiative Measure A is constitutionally invalid as denying petitioners the equal protection of the law.

Petitioners appeal from a summary judgment of dismissal on all three causes of action. The California Court of Appeal

affirmed the judgment and the California Supreme Court denied review.

The facts, as established by uncontroverted allegations in the complaint, by stipulation and by declarations in opposition to summary judgment, which must be accepted as true[2], are as follows:

Petitioners own a 272 acre ranch situate approximately 1.5 miles inland from the shoreline of the Pacific Ocean and one mile south of the City of Half Moon Bay, California. Half Moon Bay is roughly midway between San Francisco and Palo Alto on the San Francisco Peninsula and six miles south west of a freeway between those cities. Property values on the S.F. Peninsula are among the highest in the

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[2]Avey v. Santa Clara County,(1968) 257 CA2d 708; Blaustein v. Burton, (1970) 9 CA3d 161.

nation with prices in excess of $500,000.00 for a single family building lot not uncommon. Petitioner's property is about 1.5 miles from a residential development where the last sale of residential lots yielded a per acre price in excess of $750,000.00 per acre. Petitioners have been unable to obtain a buyer for their property even at a price as low as $3,600.00 per acre as a result of the development prohibitions imposed by respondents although their lands are ideal for residential development.

The property along with virtually all of the other property within the 142.8 square miles of San Mateo County lying within the area over which the California Coastal Commission asserts jurisdiction, is zoned P.A.D. or planned agricultural district, pursuant to the California

Coastal Act of 1976[3] and the San Mateo County General Plan and zoning ordinances. The principal permitted uses in the P.A.D. zone are agriculture and open space. There is no economically viable agricultural use for petitioner's property. Much of the land has a poor, thin soil and the rest is a heavy clay. There is no agricultural water for 250 acres of the property and only a limited amount for the balance of the property.

The purpose of the San Mateo County General Plan and zoning ordinances is to limit any manmade development on the property and to preserve it in open space for the benefit of the public.

The effect of the general plan and zoning ordinances is to limit development

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[3]§§ 30000 et seq., Cal Public Resources Code.

on petitioner's property to a maximum of four single family homes.

In California, county boards of supervisors normally have exclusive jurisdiction to enact and amend county general plans and zoning ordinances.[4] The San Mateo County Board of Supervisors does not have the legal power to amend the county general plan in the coastal zone area. Any such amendment must be negotiated with and approved by the California Coastal Commission [5] pursuant to the Coastal Act. San Mateo County Measure A abolishes even that limited ability to amend the general plan by requiring that a countywide election be held to amend the general plan in the coastal zone portion of the county only. Finally, §65906 Cal.

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[4] §§65300 Cal. Government Code, et seq.

[5] §30514 Cal. Public Resources Code.

Government Code removes the traditional ability of the Supervisors to grant variances except in a few situations not applicable here. The Board of Supervisors is thus legally powerless to change the zoning on petitioner's property or to grant petitioners a variance.

Petitioners did not submit any applications for development in excess of the four single family homes allowed because it would be manifestly futile for them to do so.

Respondents successfully argued that petitioner's takings claim was not ripe because they had not made at least one development application, been denied, and applied for a variance and been denied that.[6] Respondents argued that federal

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[6]See, for example, Williamson County Regional Planning Commission v. Hamilton Bank, (1985) 473 U.S. 172.

ripeness cases were valid California State law as well and the California Courts agreed.

The argument that Federal ripeness doctrine, with its prudential aspects[7] has validity in state takings cases is a sham to provide an excuse for the California judiciary to continue, unhindered by the rulings of this court, with the abolition of regulatory takings claims in violation of petitioner's rights to just compensation as provided by the Constitution of the United States.

The second cause of action of the complaint seeks a declaration that petitioner's property is not within the coastal zone as defined in §30103 Cal. Public Resources Code, and, if it is within

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[7]See, Tribe, American Constitutional Law, 2d Ed., (1988), p.67 et seq.

said boundary, that §30103 is void for vagueness. The problem arises from the fact that the words of §30103 define the landward boundary as

> "extending inland generally 1000 yards from the mean high tide line of the sea. In significant coastal estuarine,(sic) habitat, and recreational areas it extends inland to the first major ridgeline parallelling the sea or five miles, whichever is less."

It was stipulated that petitioner's property is not a coastal estuarine habitat or a recreational area and that two major ridgelines lie between petitioner's land and the shore. Since petitioner's lands are approximately 1.5 miles (2,640 yards) inland they should not be within the area defined as the coastal zone. However, the section also refers to certain maps, stating that said maps are "set forth" in an uncodified statute. The maps are not "set forth" in the other statute but are

again merely referred to. The maps are located in the California Secretary of State's archives. There are 21 such maps, each showing a different section of the California coastline. They have a random line drawn on them roughly parallelling the sea. Respondents contend that said line is the correct boundary of the coastal zone despite the fact that the maps are not physically a part of either statute, or the legislative bill enacting either statute and despite the fact that the boundary line shown on the maps is a mean distance of 1.6 miles further inland over the entire coastline of the State than the 1000 yards specified in the words of §30103 and is 4.5 miles further inland than the 1000 yards along the entire 25 miles or so of southern San Mateo County coastline. Petitioners argued that the map boundary could not be

the legal boundary because it was not enacted as a law in accordance with the provisions of the California Constitution[8] and if it was by some means unknown to petitioners held to be part of the law, then §30103 was void for vagueness. The Court of Appeal held that the maps were incorporated by reference into §30103, that said section was clear and unambiguous and that petitioner's property was therefore within the coastal zone. It is petitioner's understanding that this court will not disturb a determination by the California courts of the validity of the map boundary under the State's Constitution. Petitioners argue here, as in the courts below, that a statute which says verbally that a boundary line is generally 1000 yards from the mean high

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[8]Cal. Constitution, Art. IV, §§ 8, 10.

tide line[9], and which incorporates by reference maps which show graphically a boundary 4.5 miles further inland than the 1000 yards, is void for vagueness and ambiguity.[10]

The third cause of action challenges the constitutionality of Measure A as a denial of the equal protection of the law. The classification complained of is not the open space zoning inflicted on coastal lands. It is the creation of a different form of government in land use matters for the relatively few owners of coastal lands while preserving traditional representative government for the property owners in the rest of the county who comprise the vast majority. Measure A reenacted or changed

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[9]A precise line used by surveyors as a reference.

[10]See Cramp v. Board of Public Instruction, 368 U.S. 278.

37 policies of the coastal zone portion of the County General Plan to make the plan more restrictive and anti development. It also removed the power of the Supervisors to revise or repeal the measure without a countywide election. A coastal landowner is therefore unable to obtain relief from the extremely restrictive coastal zoning without a countywide election, which the affected landowner has no right to request, and without first negotiating with the State Coastal Commission and obtaining their approval, which the owner has no right to do[11], and only then does the landowner have the ability to apply to the Supervisors for relief. The property owners in the rest of the county merely submit their application to the

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[11]§30514 Cal. Public Resources Code.

Supervisors.[12] Petitioners therefore argue that Measure A subjects them to mob rule while the rest of the residents of the county enjoy representative government with its accompanying administrative discretion. Measure A is intentional and arbitrary discrimination against coastal landowners, including petitioners, and is patently unreasonable.

The California Court of Appeal held that petitioner's challenge to Measure A failed on two grounds. The first was lack of ripeness and was based on the fact that Measure A was not certified by the Coastal Commission until March 22, 1988, 18 days after the trial court granted summary judgment. Petitioners argued that since

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[12]Such applications actually go to the Planning Department, then to the Planning Commission and then to the Board of Supervisors for the final decision.

Measure A was an initiative enacted by the voters, it became law the instant the election was over, at least to the extent that its constitutionality could be challenged.

The second ground for affirmance mentioned in the opinion of the Court of Appeal is that no justiciable controversy was presented because petitioner's attack was based on vagueness. The opinion did not even mention equal protection.

REASONS FOR GRANTING THE WRIT

This document is getting perilously close to the 30 page limit. Petitioners trust this Court to recognize, from the Statement of the Case herein and from the prior cases involving California lands which have come before you in recent years, that the California courts will go to almost any length to abolish Fifth

Amendment rights to just compensation in regulatory takings cases, regardless of how far the taking goes. That surely is a substantial issue and requires no further argument herein. Petitioners are not rich real estate developers. We are just ordinary people. I am a garden variety lawyer and Laura Layne is a public school teacher. After thirty years of hard work and saving we now find all of our investment expectations smashed in the name of the public good. That is not right, fair, reasonable, or, we think, constitutional. We accept the public's right to zone our land as open space, thereby removing most of our traditional property rights, but they should not steal those rights from us without compensation and that is what they are doing.

The coastal zone boundary issue, like the taking issue, is one of great public importance, in addition to being important to petitioners. At stake is whether the California Coastal Commission has jurisdiction over approximately 1,363.4 square miles of California real estate in addition to the 1000 yard strip along the shore.

The California Coastal Act of 1976 was preceded by the California Coastal Act of 1972 which was self repealing in 1976. § 27104 of that act restricted the area in which permits for development were required to 1000 yards from the mean high tide line of the sea and was described in words identical to the words used to describe the coastal zone in §30103 of the 1976 Act. The legislature and the public were entitled to believe that the 1976 Act was

limiting the coastal zone to the 1972 permit area. They were tricked by the inclusion in §30103 of the single sentence referring to the maps which show a boundary which simply cannot be reconciled with the words of the statute.

The void for vagueness arguments on the coastal zone boundary issue comprise 7 full pages in Petitioner's Opening Brief to the Court of Appeal. There is no room here to include them.

The enactment of Measure A by the voters of San Mateo County is, to petitioners, like shooting a horse that is already dead. Most of petitioner's traditional rights over their lands were effectively and permanently removed by the 1976 Coastal Act and the Local Coastal Plan as included in the County General Plan. Measure A's removal of petitioner's rights

to representative government while preserving them for non coastal landowners is, however, so offensive as to require the inclusion of the issue in this lawsuit and consequently, in this document. The issue is one of public importance not only because of the plight of many other coastal landowners, and boards of supervisors who need all of their discretionary powers, but also because the political technique involved will probably become epidemic if it is not stopped now.

CONCLUSION

For these various reasons, this petition for certiorari should be granted.

Respectfully submitted,

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APPENDIX

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(stamp) Filed May 30, 1989

Court of Appeal, First App. Dist.

Ron D. Barrow

NOT TO BE PUBLISHED

IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT, DIVISION THREE

DONALD M. LAYNE et al.,

Plaintiffs and Appellants,

V. A041769

COUNTY OF SAN MATEO et al.,

Defendants and Respondents.

(Super. Ct. No. 321065

San Mateo County)

Donald Layne and Laura Layne (the Laynes), appearing in propria persona, appeal from a summary judgment in favor of defendants County of San Mateo (individually County), State of California, and California Coastal

Commission (collectively respondents) in the Laynes' action attacking the land use regulations governing development of land they own within the County coastal zone. The Laynes contend that the court erred in dismissing their first and third causes of action on the ground that the controversy was not ripe for decision and in dismissing their second cause of action on the merits. We affirm the judgment.

STANDARD OF REVIEW OF SUMMARY JUDGMENT

"(a) **Any** party may move for summary judgment in any action or proceeding if it is contended that the action has no merit . . . ." (Code Civ. Proc., § 437c, subd. (a).) Summary judgment is properly granted where the facts are not in dispute and

where dispositive issues are determined in favor of the moving party. (Allis-Chalmers Corp. v. City of Oxnard (1981) 126 Cal. App.3d 814, 818.) Where, as here, a defendant is the moving party, it must either negate a necessary element of plaintiff's case or state a complete defense. (Parsons Manufacturing Corp. v. Superior Court (1984) 156 Cal.App.3d 1151, 1157.) Where the defendant makes a sufficient showing in support of summary judgment, the plaintiff has the burden of showing that triable issues of fact exist. (Chern v. Bank of America, (1976) 15 Cal.3d 866, 873.) If the plaintiff fails, then summary judgment is proper. (Los Angeles County-U.S.C. Medical center v. Superior Court (1984) 155 Cal.App.3d 454, 459.)

On appeal, an order granting summary judgment will not be reversed unless a clear showing of abuse of discretion is made. (Fireman's Fund Ins. Co. v. Fibreboard Corp. (1986) 182 Cal.App.3d 462, 466.) If the trial court reaches a result which is correct, but for the wrong reasons, it will be affirmed. (Malmstrom v. Kaiser Aluminum & Chemical Corp. (1986) 187 Cal.App.3d 299, 308.)

Background

Statutes. The regulatory framework challenged by the Laynes consists of the following.

(1) The California Coastal Act of 1976 (hereafter Coastal Act) (Pub. Resources Code, § 30000 et seq.),[1] a

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[1]1/ All further statutory references are to the Public Resources Code unless otherwise indicated.

comprehensive scheme to govern land use planning along the entire California coastal zone.

(2) The County's "Local Coastal Program," enacted to comply with the directives of the Coastal Act (§ 30500), which went into effect in April 1981. The Local Coastal Program consists of the land use plan and the implementation plan. The land use policies relevant to appellants' property are in the agriculture component of the land use plan, and the zoning regulations implementing those policies are contained in the County's Planned Agricultural District ordinance.

(3) Measure A was an initiative ordinance containing 48 minor and 5 major amendments to the land use portion of the County's Local Coastal Program, adopted by County

voters in November 1986, subject to certification by the Coastal Commission. §30514, subd. (a).)

The property. The Laynes purchased their property in the last quarter of 1978. It consists of about 272 acres of land lying along Purisima Creek Road in San Mateo County and is located about one and one-half miles inland from the shoreline. The land lies within the coastal zone as that zone is depicted on the maps adopted by reference by the Legislature. For purposes of the summary judgment motion, respondents stipulated that none of appellants' lands are significant estuarine habitats or recreational areas, and all lie inland of the first major ridgeline paralleling the sea. Donald Layne claims that the property is 'ideal' for residential use.

Permit application The Laynes have applied for only -3- one coastal development permit since they bought their property. In 1978, they applied for a use permit to place a mobile home on their property to house farm labor. The zoning hearing officer granted their application and issued the permit, which has since been renewed as recently as October 15, 1987. In 1981, leaseholders of a 28-acre portion of the Laynes' property applied for and received a coastal development permit for a commercial horse training operation on their leased acreage. This permit was extended in 1983.

In 1984, the Laynes asked the County to determine the number of existing separate legal parcels contained in their 272 acres. In a letter dated December 21,

1984, the County informed the Laynes that they had two existing legal parcels. In the same letter, the planning division informed them that there might be a potential of additional density credits allowing additional parcels to be created. It advised them that to determine the exact number of potential parcels, a density analysis would be required. The letter included enclosures of an application, fee schedule, and the applicable Planned Agricultural District ordinance explaining how density is determined on large parcels. The Laynes did not apply for a density credit determination until December 10, 1987, more than four months after their action was filed. The results, allowing a total of four density credits, were received and reported to the court after the

motions for summary judgment were heard but before judgment was entered.

Discussion

The Laynes' complaint alleged three causes of action,

seeking: (1) damages for a regulatory taking (inverse condemnation) of their property; (2) a declaration that their property is not within the legal boundary of the coastal zone; and (3) a declaration that the Local Coastal Program and the initiative Measure A were unconstitutional on a variety of grounds.

Inverse condemnation. The trial court properly granted summary judgment on the inverse condemnation cause of action because the Laynes' complaint did not present a ripe claim. The requirement of ripeness is an aspect of the doctrine of justiciability and is 'rooted in the

fundamental concept that the proper role of the judiciary does not extend to the resolution of abstract differences of legal opinion.' (Pacific Legal Foundation v. California Coastal Com, (1982) 33 Cal.3d 158, 170.) The primary basis of the ripeness doctrine is the concept that judicial decisions should be arrived at 'in the context of an actual set of facts so that the issues will be framed with sufficient definiteness to enable the court to make a decree finally disposing of the controversy.' (Ibid.)

The United States Supreme Court applied the ripeness doctrine to an inverse condemnation case similar to the one before us in MacDonald, Sommer & Frates v. Yolo County (1986) 477 U.S. 340 (hereafter MacDonald). There the appellant submitted a tentative

subdivision map to the county planning commission proposing that the subject property, some of which was planted with corn, be subdivided into 159 residential lots. The commission and the county board of supervisors rejected the plan as inconsistent with the general plan of the county in a number of

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specified particulars. (Id., at pp. 342-343.) Appellants filed an action alleging that the county had appropriated the "entire economic use" of their property and that no other beneficial use allowed by the county plan would be suitable to it. (Id., at p. 344.) The superior court sustained a demurrer to this complaint, and the California Court of Appeal affirmed, citing the California Supreme Court's decision in Agins v. City

of Tiburon (1979) 24 Cal.3d 266,[2] which had held (id., at pp. 269-270) that a zoning ordinance which limits use of property cannot provide the basis for an inverse condemnation action, but only for an action for declaratory relief or mandamus. (MacDonald, supra, at pp. 345-346.)[3]

In the alternative, the Court of Appeal held that even if California permitted the remedy of inverse condemnation, there was no basis for recovery, because denial of approval of a particular plan ". . .

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[2] Affirmed on another ground sub nom, Agins v. Tiburon (1980) 447 U.S. 255. Hereafter we cite these two decisions as Agins (Cal.) and &gins (U.S.).

[3] The decision (Agins (Cal.) was overruled as being in violation of the Fifth Amendment in First Lutheran Church v. Los Angeles County (1987) 482 U.S. 304, 306-307. (See generally, Guinnane v. City and County of San Francisco (1987) 197 Cal.App. 3d 862, 867.)

cannot be equated with a refusal to permit any development . . . . Land use planning is not an all-or nothing proposition. A governmental entity is not required to permit a landowner to develop property to [the] full extent he [or she] might desire or be charged with an unconstitutional taking of the property. . ." (MacDonald, supra, 477 U.S. at 347.) The California Supreme Court denied hearing.

The United States Supreme Court declined to reach the merits, reasoning as follows. A regulatory taking (inverse condemnation) claim has two components. The first is that a regulation has "taken" the property, and the second is that there has not been just compensation. The first component is present and the property has been taken

if a regulation goes "too far." (MacDonald, supra, 477 U.S. at p. 348.) A prerequisite to assertion of a claim that this has occurred is 'a final and authoritative determination of the type and intensity of development legally permitted on the subject property. A court cannot determine whether a regulation has gone 'too far' unless it knows how far the regulation goes.' (Ibid.) Similarly, a court cannot determine whether just compensation has been provided 'until it knows what, if any, compensation the responsible administrative body intends to provide. [Citation.]' (",, at p. 350.)

In sum, the court stated, 'Our cases uniformly reflect an insistence on knowing the nature and extent of permitted development before adjudicating

the constitutionality of the regulations that purport to limit it.' Id. at p. 351.)

An exception to this insistence appears where the statute on its face goes too far and constitutes a taking. (Lake Nacimiento Ranch v. San Luis Obispo County (9th Cir. 1987) 830 F.2d 977, 981 (hereafter Lake Nacimiento).) In order to prevail on this theory that the regulation is facially invalid, the plaintiff must show that (1) it does not substantially advance a legitimate state interest, or (2) it denies the owner economically

viable use of the land. citing Agins (U.S.) supra, 447 U.S. at p. 260.)

Although the Laynes seem to think otherwise, it cannot seriously be

questioned that the Coastal Act substantially advances legitimate state interests. The Legislature has described the California coast as a delicately balanced ecosystem (§§ 30001, subd. (a))[4] which must be protected in order to promote the public safety, health, and welfare (§ 30001, subd. (c)).[5] The Coastal Act advances these important state interests.

Nor have the Laynes shown that the regulations in question deprive them of

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[4] The Laynes call this 'environmental jargon' and describe the California coast as 'about 800 miles of granite mountains, sagebrush, abandoned farms etc.'

[5] The Laynes view their property as 'hopelessly and permanently consigned to remaining a cow pasture . . . ' and they state that 'Vast stretches of the coastal lands are useless for any other purpose but they would provide a grand place for housing people.'

economically viable use of their land. The essence of their complaint is that their "investment expectations" have been thwarted and that they will not be able to realize the "up to $750,000.00 per acre" for which they had hoped. This is not the test for economically viable use. Disappointed expectations are not a "taking." (Lake Nacimiento, supra, 830 F.2d at p. 981.) '[T]he question of whether a regulation interferes with one's reasonable investment-backed expectations may only be answered in the context of an 'as applied' challenge. [Citation.]' (Ibid., fn. omitted.)

> The proper test for deprivation of economically viable

use looks to the existence of permissible uses, and the Laynes, declarations show

that such uses exist for their land. Donald Layne's declaration describes the property as "ideal for residential development." On their face the regulations permit the Laynes to build up to eight residences. Furthermore, under the County's program there are 19 permissible uses for land which is deemed suitable for agricultural purposes.

We conclude that the regulatory framework before us is not facially invalid, and that therefore the Laynes were required to pursue an "as applied" attack and to present a claim that was ripe. It follows that in order properly to obtain a summary judgment, all that respondents were required to show was that the Laynes had not sought from the County a determination of the 'type and intensity of development legally

permitted . . . ."(McDonald, supra, 477 U.S. at p. 348; Lake Nacimiento, supra, 830 F.2d at p. 980.) The Laynes were required to obtain this determination by seeking and having rejected a development plan which was not exceedingly grandiose, and by applying for a variance and having it rejected. (Williamson Planning Comm'n v. Hamilton Bank (1985) 473 U.S. 172, 187-188; MacDonald, supra, 477 U.S. at p. 353, fn. 9; Lake Nacimiento, supra, 830 F.2d at p. 980.)

The Laynes have not met this requirement. Their one application for a coastal development permit was granted in 1978, and their leaseholders' 1981 and 1983 applications were also approved. It is true that they requested a density analysis and obtained the results of it shortly before summary judgment was

entered. However, according to the declaration of Donald Woolfe, who introduced the concept of density analysis into County planning law, the number of density credits established by the density analysis is not immutable but can be decreased depending on physical factors specific to the site. Thus the Laynes are not in a position to have obtained the kind of "final decision" needed to give them a ripe claim. (See Hoehne v. County of San Benito (9th Cir. 1989) 870 F.2d 529, 532.)

Lastly, the "final decision" requirement can be avoided if attempting to comply with it would be futile. (Hoehne v. County of San Benito, supra, 870 F.2d at p. 535 [no need for plaintiffs to seek variance where supervisors' legislative act of rezoning site and changing minimum

lot size in a manner clearly and finally adverse to plaintiffs' interests renders variance unavailable and application futile].) The Laynes have a "heavy burden" of showing futility and cannot meet it at this point because they have not as yet made at least one meaningful application for a development project or for a variance. (Lake Nacimiento, supra, 830 F.2d at p. 980.)

The trial court properly granted summary judgment on the first cause of action.

Property within coastal zone. In their second cause of action, the Laynes sought a declaration that their property was not within the coastal zone. The trial court granted respondents' summary judgment on the merits. We agree.

Section 30103 defines "[c]oastal zone" as the land and water area of California 'specified

on the maps identified

and set forth in Section 17 of that chapter of the Statutes of the 1975-76 Regular Session enacting this division, extending seaward to the state's outer limit of jurisdiction . . . and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line . . . . whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards I

Statutes 1976, chapter 1330 (Sen. Bill No. 1277), section 17, page 6012 (as amended by Stats. 1976, ch. 1331, S 29,

p. 6027) reads: 'The coastal zone, as generally defined in Section 30103 of the Public Resources Code, shall include the land and water areas as shown on the map prepared by the California Coastal Zone Conservation Commission titled 'California Coastal Zone' dated August 11, 1976, and on file with the Secretary of State." Hereafter we refer to this as the "section 17 maps."

The Laynes concede that their property falls within the coastal zone as defined by the section 17 maps. They argue that the maps were not constitutionally adopted because they were not enacted by "bill" and were not presented to the Governor for signature. (Cal. Const., art. IV, §§ 8, subd. (b), 10, subd. (a).) They cite no authority forbidding a bill from incorporating a map by reference,

and we find none. On the contrary, the practice has been permitted for over 100 years.

In City of Napa v. Easterby (1888) 76 Cal. 222, the validity of an ordinance enacting a street assessment was in issue.

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One of the contentions was that the maps to which the ordinance referred were not properly published, as is required of an ordinance. The Supreme Court had little patience for the suggestion. The court said that although the law considers the ordinance and the map to which it refers as one for some purposes, "this fiction will not be extended to any such absurd consequences as is contended for here. Where, for example, a deed refers for a description to a map in the office of

some city official, it can hardly be supposed that the map must be carried to the recorder's office and filed there as a part of the deed. And so here, all that is required to be published is the ordinance itself".

(Id., at p. 227; see also Banks v. Civil Service Commission (1937) 10 Cal.2d 435, 441 [incorporation by reference of any "public document" permitted]; In re Burke (1923) 190 Cal. 326, 327 [incorporation by reference of a federal criminal statute permitted].) We reject the Laynes' claim as well.

The Laynes next argue that even if incorporation by reference is permissible in theory, to permit it here would create a fatal ambiguity and vagueness in section 30103. On the contrary, we find the meaning of the statute to be clear

and unambiguous, as did the office of the Attorney General in an opinion issued in 1980. (63 Ops.Cal.Atty.Gen. 107 (1980).) One of the questions asked of that office by the Mendocino County Counsel was 'What are the legal landward . . . boundaries of the coastal zone?' (Ibid.) Citing and quoting section 30103 and subsequent legislation, the Attorney General said, "we conclude that the Legislature clearly intended and did define the landward boundary]

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to be the line depicted on the section 17 maps as subsequently modified by the commission and the Legislature. The quoted words [defining the landward boundary in section 301031] are merely descriptive of the rationale used by the Legislature in drawing the particular

line on the maps." (Id., at p. 111, fn. omitted.) This official interpretation, while not controlling, is entitled to great respect by the courts. (E.g., Sonoma County Bd. of Education v. Public Employment Relations Bd. (1980) 102 Cal.App.3d 689, 699.)

As suggested by respondents, this interpretation finds support in the fact that when, subsequent to enacting the Coastal Act, the Legislature sought to change the landward boundary of the zone, it amended the section 17 maps, not section 30103. (See §§ 30150-30176.) It also finds support in the general principle, applicable here, that particular expressions such as the section 17 maps take precedence over general expression such as the statute. (Civ. Code, § 3534.) Finally, we find the legislative history

cited by respondents to be especially persuasive. On August 13, 1976, Member of the Assembly Arnett proposed an amendment to the Coastal Act which would have exempted the fixing of the County landward boundary from the section 17 maps and would have provided that the coastal zone in that county would not extend more than 1,000 yards inland from the mean high tide line. The amendment was immediately rejected by a vote of 36 to 29. (10 Assem. J. (1975-1976 Reg. Sess.) Aug. 13, 1976, p. 19057; see also §§ 30150, 30156 [changing boundaries of a number of areas, but not of the area in question].)

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In sum, the fact that the statute does not read as the Laynes would like renders it neither vague nor ambiguous. The trial

court properly granted summary judgment on the second cause of action.

Local Coastal Program and Measure A. The Laynes' third cause of action alleged that the Local Coastal Program and Measure A were void for vagueness and that Measure A was void on a number of grounds. Their shotgun approach to attacking the statutory scheme properly resulted in the trial court's grant of summary judgment on ripeness grounds.

Certification of Measure A by the Coastal Commission was not completed until March 22, 1988, 18 days after the trial court granted summary judgment in this case. The lack of ripeness under these circumstances is obvious. (Code Civ. Proc.,§ 1061.) Also, because the

Laynes' attack was one alleging vagueness in the abstract, as we discussed above, the lack of a specific facts in a particular context supports the finding of lack of ripeness and the court's refusal to consider what amounted to a hypothetical controversy. (Pacific Legal 1 Foundation v. California coastal Com., supra, 33 Cal.3d at pp. 169-173; see Cranston v. City of Richmond (1985) 40 Cal.3d 755, 764-765.)

Although respondents raise a number of persuasive arguments that the Laynes' contentions are without merit, in light of the correct ruling by the trial court on ripeness grounds, we decline to reach them.

The trial court properly granted respondents' motion

for summary judgment on all three causes of action. The judgment is affirmed.

Barry-Deal, J.

We concur:

White, P.J.

Merrill, J.

COASTAL PROTECTION INITIATIVE

MEASURE A

"Initiative measure proposing ordinance amending County Local Coastal Program. Reenacts or changes 37 specified policies concerning new development, public works. energy, agriculture, sensitive habitats. and visual resources. Prevents Board of Supervisors from changing these policies without election."

(Full Text)

The people of the County of San, Mateo do ordain as follows:

Section 1.. The purposes of this ordinance are:

(1) To protect the farm lands. forests. beaches. scenic beauty and other

natural resources of the San Mateo Coast from poorly located. excessive and harmful development:

(2) To preserve watersheds. environmentally sensitive areas and wildlife habitats:

(3) To maintain agriculture and timber uses on the Coast, including provision of housing for employees:

(4) To limit urban.type development to existing urban areas:

(5) To prevent tne construction of onshore facitities and pipelines for offshore oil drilling;

(6) To limit the costs to County taxpayers of roads. fire protection. law enforcement. and Other government services by restricting distant and sprawling development on the coastside;

(7) To stabilize and make more permanent essential sateguards of the County's Local Coastal Program. by requiring that any impairment of those safeguards be approved by the voters of San Mateo County: and

(8) In general to conserve tne natural heritage and beauty as well as the remarkable diversity of San Mateo County, for current and future generations. yet allow reasonable use of the land.

Section 2. Findings:

Importance of San Mateo Coastside. The San Mateo Coastside is a vital and beautiful natural resource. Its fields, forests. beaches. streams, hillsides ana wildlife add immeasurably to the quality of the environment and life in the County. They provide an important contrast to the

County's heavily built-up urban areas. as well as offer habitat for a large variety of wild plants and animals.

2) Harm to Historic and Natural Qualities. There has been a great amount of development in San Mateo County, including construction on the Coastside. Many of the valuable historic and natural qualities of the County have been destroyed or impaired; much that remains is in jeopardy. If safeguards are not maintained and strengthened. many of these remaining qualities will be permanently lost.

(3) Pressure for Intensive Development. Pressures for building on the Coastside are intensifying rapidly, especially with the construction or proposed construction of larger highways, increased water supplies. and new sewage treatment facilities. The possibilities of extensive

urban development are great. Without adequate protections. the Coastside ultimately could be densely developed. (4) Impact of Oil Drilling. There is imminent threat of major oil drilling off the San Mateo Coast, with resulting construction of extensive onshore industrial facilities, degredation of beaches, marine habitats, and coastal marshes. air and water pollution. and destruction of invaluable scenic views by offshore drilling platforms. (5) Protection of Agriculture and Tourism. Agriculture is the second largest industry in the County. It should be protected against displacement or serious interference by commercial. residential. or other development. Tourism, also a major industry in the County, is critically dependent upon preservation of

coastside natural and scenic qualities.

(6) Reduction of Costs to Taxpayers. Distant. sprawling development on the Coast will add materially to the cost, to County taxpayers of providing roads, fire protection, law enforcement and other services.

(7) Maintenance of Coastal Protection Safeguards. The County earlier adopted a strong Local Coastal Program to protect Coastal resources, after many studies and extensive public participation. The County Government has shown a willingness, however. to weaken the protections of this Program and to Permit excessive and poorly located development. Because of the vital importance of the Coast, it is necessary to provide more stability and permanence to the Local Coastal Program. by requiring that changes in essential policies by

approved by the voters of San Mateo County.

Section 3. Enactment of Key Local Coastal Program Policies

The following policy provisions of the San Mateo County Local Coastal Program, as amended in this section, are enacted by this ordinance. These provisions may be repealed or amended only by the voters of San Mateo County, except that the Board of Supervisors. in conformance with the California Coastal Act of 1976 and other state law, may amend the provisions to further restrict non-agricultural development, density, or use. Other provisions of the Local Coastal Program may be amended by the Board of Supervisors in conformance with the Coastal Act, provided that the amendments are consistent with the provisions of this ordinance.

Local Coastal Program Policies

LOCATING AND PLANNING NEW DEVELOPMENT COMPONENT

The County will:

RURAL AREAS

1.8 Lancd Uses and Development Densities in Rural Areas

a. Allow new development (as defined in section 30106 of the California Coastal Act of 1976) in rural areas only if it is demonstrated that it will not (1) have significant adverse impacts. either individually or cumulatively, on coastal resources or (2) diminish the ability to keep) all prime agricultural land and other land suitable for agriculture (as defined in the Agriculture Component) in agricultural

production.

b. Permit in rural areas land uses designated on the Local Coastal Program Land use Plan Maps and conditional uses. at densities specified in Table 1.2 and 1.3.

c. Require density credits for non-agricultural land uses in rural areas. including any residential use, excect affordable housing (to the extent authorized in Policy 3.27 of the Local Coastal Program on March 25. 1986. the date notice of circulation of this ordinance was published and farm labor housing. One density credit shall be required for each 315 gallons maximum daily water use as a resuit of a land use. For purposes of this ordinance, a single family dwelling

unit shall be deemed to use 315 gallons per day. In order to give priority to Public and Commercial Recreation land uses. one density credit shall be required for those uses for each 630 gallons of maximum daily water use. Water use shall be calculated on the best available information and shall include all appurtenant uses. e.g. landscaping, swimming pools, etc.

TABLE 1.3

MAXIMUM DENSITY CREDITS

In the rural areas of the Coastal Zone which are zoned Planned Agricultural district, Resource Management, or Timberland Preserve. determine the maximum number of densiy, credits to which any legal parcel is entitied by

using the following method of calculation.

a. Prime Agricultural Lands

One density credit for that portion of a parcel which is prime agricultural land as defined in Policy 5.1. For parcels with less than 160 acres of prime land. density credit shall be proportioned on the basis of 1 credit per 160 acres (i.e. shall be that fraction of one density credit which equals the number of acres of prime land divided by 160).

b. Lands With Landslide Susceptibility

One density credit for that portion of a parcel which lies within any of the three least stable categories (categories V, VI and L) as shown on the U.S. Geological Survey Map MF 360. "Landslide Susceptibility in San

Mateo County," or its current replacement. For parcels with less than 160 acres of such land, density credit shall be proportioned on the basis of 1 credit per 160 acres.

c. Land With Slope 50% or Greater

One density credit for that portion of a parcel which has a slope 50- or greater. For parcels with less than 160 acres of such land. density credit shall be proportioned on the basis of 1 credit per 160 acres.

d. Remote Lands

One density credit per 160 acres for that portion of a Parcel over 1 / 2 mile frcm a public road that was an existing, all-weather. through Public road before the County Local Coastal Program was initially certified in November 1980.

e. Land With Slope 30% But Less Than 50%

One density credit per 80 acres for that portion of a parcel which has a slope 30% but less than 50%.

f. Land Within Rift Zones or Active Faults

One density credit per 80 acres for that portion of a parcel which is located within the rift zone or zone of fractured rock of an active fault as defined by the U.S. Geological Survey and mapped on USGS Map MF 355, "Active faults, probably active faults, and associated fracture zones in San Mateo County," or its current replacement.

g. Lands Within 100 Year Flood Plain

One density credit per 60 acres for that portion of a parcel falling within a 100 year flood plain as most recently defined by the Federal

Emergency Management Agency, the U.S. Geological Survey. or the U.S. Army Corps of Engineers.

h. Land With Slope 15% But Less Than 30% One density credit per 60 acres for that portion of a parcel with a slope in excess of 15% but less than 30%

i. Land Within Agricultural Preserves or Exclusive Agricultural Districts One density credit per 60 acres for that portion of a parcel within agricultural preserves or the exclusive Agricultural Districts as definied in the Resource Conservation Area Density Matrix Policy on March 25. 1986.

All Other Lands

One density credit per 40 acres for that portion or portions of a parcel

not within the above areas.

k. Bonus Density Credit for New Water Storage Capacity

One bonus density credit shall be allowed for each 24.5 acre feet of new water storage capacity demonstrated to be needed and developed for agricultural cultivation or livestock. Water from this storage may be used only for agricultural purposes. These bonus credits may be used on site or transferred to another parcel. However,none of the credits may be used on prime agricultural lands or in scenic corridors. Use of the credits shall be subject to planning Commission approval in accordance with the provisions of this

and other county ordinances.

If the same portion of a parcel is covered by two or more of the subsections a. througn J., the density credit for that portion shall be calculated solely on the basis of the subsection which permits the least density credit.

.9 Conservation Easements

a. In rural areas designated as open space on the Land Use Plan Maps require the applicant for a land division, as a condition of approval. to grant to the County (and the County to accept) a conservation easement containing a covenant. running with the land in perpetuity, which limits the use of the land covered by the easement to uses consistent with open space (as defined in the California Open Space Land Acts of 1972 on January 1, 1980).

b. Exempt land divisions which solely provide affordable housing, as defined in Policy 3.7 of the Local Coastal Program on March 25, 1986, from the requirements in subsection a.

1.18 Location of New Development

a. Direct new development to existing urban areas and rural service centers in

order to: (1) discourage urban sprawl. (2) maximize the efficiency of public facilities. services, and utilities, (3) minimize energy consumption, (4) encourage the orderly formation and development of local governmental agencies, (5) protect and enhance the natural environment, and (6) revitalize existing developed areas.

1.28 Legalizing Parcels

Require a Coastal Development Permit when issuing a Certificate of Compliance to legalize parcels under Section 66499,35(b) of the California Government Code (i.e., parcels illegally created without benefit of required government review and approval).

1.29 Coastal Development Permits Standards for Legalizing Parcels

Require Coastal Development Permits to legalize parcels. Where applicable, conditions permits to meet the following standards. (Permit applications snall be considered as "conditional uses" for purposes of review.)

a. On developed illegal parcels created before Proposition 20

(effective date January 1. 1973). on lands located within 1,000 yards of the Mean High Tide Line. or the Coastal Act of 1976 (effective date January 1. 1977), on lands shown on the official maps adopted by the Legislature, which received all required building Permits or government approvals for development. a Coastal Development Permit to legalize the parcel shall be issued without conditions.

b. On developed illegal parcels created before Proposition 20, on lands within 1,000 yards of the Mean High Tide Line, or the Coastal Act of 1976. on lands shown on the official maps adopted by the Legislature, which received a Coastal Permit for the development, a Coastal Permit to

legalize the parcel shall be issued without conditions.

c. On illegal parcels created and developed after Proposition 20, on lands within 1,000 yards of the Mean High Tide Line, or the Coastal Act of 1976. on lands shown on the official maps adooted by the Legislature. a Coastal Development Permit shall be issued if the development and parcel configuration do not have any substantial adverse impact on coastal resources, in conformance with the standards of the Coastal Development District regulations. Permits to legalize this type of development and parcel shall be conditioned to maximize consistency with Local Coastal Program resource protection policies.

d. On undeveloped parcels created before Proposition 20. on lands within 1.000 yards of the Mean High Tide Line, or the Coastal Act of 1976. on lands shown on the official maps adopted by the Legislature. a Coastal Permit shall be . issued to legalize the parcel if the parcel configuration will not have any substantial adverse impact on coastal resources. in conformance witn the standards of the Coastal Development District regulations. Permits to legalize this type of parcel shall be conditioned to maximize consistency with Local Coastal Program resource protection policies. A separate Coastal Development Permit. subject to all applicable Local Coastal Program requirements. shall be required for

any development of the parcel.

e. On undeveloped illegal parcels created after Proposition 20, on lands located within 1,000 yards of the Mean Hign Tide Line. or the Coastal Act of 1976. on lands shown on the official map adopted by the Legislature. a Coastal Development Permit is necessary to legalize the parcel. A permit may be issued only if the land division is in conformance with the standards of the Coastal development District regulations.

GENERAL POLICIES PUBLIC WORKS COMPONENT

The County will:

2.4 Ordinance Conformity

As a condition of Coastal Development Permit approval. special districts,

public utilities and other government agencies shall conform to the County's zoning ordinance and the policies cf the Local Coastal Program.

2.6 Capacity Limits

Limit development or expansion of public works facilities to a capaciy which does not exceed that needed to serve buildout of the Local Coastal Program.

2.14 Establishing Service Area Boundaries

a. Confine urban level services provided by governmental agencies. special districts and public utilities to urban areas. rural service centers and rural residential areas as designated by the Local Coastal Prcgram on March 25, 1986.

b. Redraft the boundaries of special districts or public utilities providing urban level services to correspond to the boundaries or urban areas, rural service centers and rural residential areas established by the Local Coastal Program. c. Allow exceptions to a. and b. when all alternatives have been fully explored and a special district or public utility is required to maintain some rural land within its boundaries in order to continue a service to its customers which is (1) otherwise consistent with the policies of the Local Coastal Program. (2) maintains the rural nature of undeveloped areas. particularly the use and productivity of agricultural land. (3) maintains

the present level of service to existing users in undeveloped areas, and (4) where an illegal situation or great hardship would be created by detachment from a special district or public utility.

2.15 New or Expanded Special Districts

Allow the formation or expansion of special districts only when the new or expanded district would not cause or allow development or uses inconsistent with the Local Coastal Program.

ENERGY COMPONENT

ONSHORE FACILITIES FOR OFFSHORE OIL

4.23 Permit Requirement

a. Define onshore facilities for offshore oil as temporary or permanent service bases. Including but not limited to warehouse, open' storage or stockpiling

areas, offices, communication centers. harbor or wharf development or improvement. parking and helipad areas, processing plants and oil storage tanks. 4.25 Locational Criteria

Prohibit Onshore facilities for offshore oil or gas from locating in the Coastal Zone.

PIPELINES AND TRANSMISSION LINES

4.28 Permit Requirements

Require the issuance of a Coastal Development Permit for all pipelines and transmission lines in the Coastal Zone wnich are not under the jurisdiction of the California Energy Commission. Prohibit pipelines for the transmission of offshore oil and gas.

The County will:AGRICULTURE COMPONENT

OPEN FIELD AGRICULTURE 5.1 Definition of Prime Agricultural Lands

define prime agricultural lands as: (1) All land which qualifies for rating as Class I or Class 11 in the U.S. Department of agriculture, soil conservation, service land use capability classification as well as all class III land capable of growing artichokes or brussel sprouts. (2) All land which qualifies for rating 80-100 in the Storie index Rating. (3) Land which supports livestock for the production of food and fiber and which has an annual carrying capacity equivalent to at least one animal unit per acre as defined by the U.S. Department ot Agriculture. (4) Land planted with fruit or nut bearing trees, vines, bushes. or

crops which have a non bearing period of less than five years and which normally return during the commercial bearing period on a annual basis. from tne production of unprocessed agricultural plant production not less than $200.00 per acre.

(5) Land which has returned from the production of an unprocessed agricultural plant product an annual value that is not less than $200 per acre within three of the five previous years.

The S200 per acre amount in subsection (4) and (5) shall be adjusted regularly for inflation,. using 1965 as the base year, according to a recognized consumer price index.

5.2 Designation of Prime Agricultural Lands

Designate any parcel which contains prime agricultural lands as Agriculture on the local coastal program land use plan map subject to the following exceptions: state park land, existing as of the date of local Coastal Program certification. urban areas, rural service centers, and solid waste disposal sites necessary for the health, safety, and welfare of the County.

5.3 Definition of Lands Suitable for Agriculture

Define other lands suitable for agriculture as lands on which existing or potential agricultural use is feasible, including dry farming, animal grazing, and timber

harvesting.

5.4 Designation of Lands Suitable for Agriculture

Designate any parcel, which contains other lands suitable for agriculture as Agriculture on the Local Coastal Program Land Use Plan Maps, subject to the following exceptions: urban areas, rural service centers, State Park lands existing as of the date of Land Use Plan certification, and solid waste disposal sites necessary for the health, safety and welfare of the County.

5.5 Permitted Uses on Prime Agricultural Lands Designated as Agriculture

a. Permit agricultural and agriculturally related development on prime agricultural lands. Specifically, allow only the

following uses: (1) agricultural including, but not limited to, the cultivation of food, fiber or flowers, and the grazing, growing, or pasturing of livestock: (2) non-residential development customarily considered accessory to agricultural uses including barns. storage/ equipment sheds, stables for farm animals, fences. water wells, well covers. Pump houses, and water storage tanks. water impoundments, water pollution control facilities for agricultural purposes, and temporary roadstands for seasonal sale of produce grown in San Mateo County: (3) soil dependent greenhouse and nurseries: and (4) repairs, afterations, and additions to existing single-familv residences.

b. Conditionally permit the following uses: (1) single-family residences: (2) farm labor housing; (3) public recreation and shoreline access trails, (4) non-soil dependent greenhouses ard nurseries: (5) onshore oil and gas exploration. production. and minimum necessary related storage; (6) uses ancillary to agriculture: (7) permanent roadstands for the sale of produce, provided that the amount of prime agricultural land converted does not exceed one-quarter

acre; 18) facilities for the processing, storing, packaging and shipping of agricultural products: and (9) commercial wood lots and temporary storage of logs.

5.6 **Permitted Uses on Lands Suitable for Agriculture Designated as Agriculture**

a. Permit agricultural and agriculturally related development on land suitable for agricuiture. Specifically, allow only the following uses: (1) agriculture including, but not limited to, the cultivation of food, fiber or flowers. and the grazing, growing, or pasturing of livestock: (2) non-residential development customarily considered accessory to agricultural uses including barns. Storage/equipment sheds. fences. water wells, well covers. pump houses. water storage tanks. water impoundments. water polution control facilities for agricultural purpose

and temporary road stands for seasonal sale of produce grown in San Mateo Counry: (3) dairies; (4) greenhouses and nurseries; and (5) repairs. alterations. and additions to existing single-family residences.

b. Conditionally permit the following uses: (1) single-family residences. (2) farm labor housing (3) multi.family residences if affordabile housing, (4) Public recreation and shoreline access traiss. (5) schools. (6) fire stations. (7) ccmmercial recreation including country inns, stables, riding academies, rod and gun clubs and private beaches. (8) Agricultural activities. (9) wineries. (10) timber harvesting, commercial wood lot and storaqe of logs. (11) Onshore oil

and gas exploration, production and storage (12) facilities for the processing. storing.packaging and shipping of agricultural products. (13) uses ancillary to agriculture. (14) Dog kennels and breeding facilities. (15) limited low intensity scientific technical research and test facilities , and (16) Permanent road stands for the sale of produce.

5.7 Division of Prime Agricultural Land Designated as Agricultural a. Prohibit the division of parcels consisting entirely of prime agricultural land.

b. Prohibit the division of prime agriculturan land within a parcel unless it can be demonstrated that existing or potential agricultural productivity would

not be reduced.

c. Prohibit the creation of new parcels whose only building site would be on prime agricultural land.

5.8 Conversion of Prime Agricultural Land Designated as Agriculture

a. Prohibit conversion of prime agricultural land within a parcel to a conditionally permitted use unless it can be demonstrated

(1) that no alternative site exists for the use.

(2) clearly defined buffer areas are provided between agricultural and non. agricultural uses.

(3)the procuctivity of any adjacent agricultural land will not be diminished. and (4)1public service and facility expansicns and permitted uses will not impair agricultural

viability. including by increased assessment costs or de-graded air and water quality.

b. in the case ot a recreational facilitv on prime agricultural land owned by a public agency, require the agency:

(1) To execute a recordable agreement with the County that all prine agricultural land and other land suitaole for agriculture which is not needed for recreational development or for the protection and vital functioning of a sensitive habitat win be permently protected for agriculture and.

(21wheneever legally feasible. to agree to lease the maximum amount of agricultural land to active farm-operators on terms compatible with the primary recreational and

habitat use.

5.9 Division of Land Suitable for Agriculture Designated as Agriculture

a. Prohibit the division of lands suitable !or agriculture unless it can be demonstrated that existing or potential agricultural productivity of any resulting parcel determined to be feasible for agricultural would not be reduced.

5.10 Conversion of Land Suitable for Agriculture Designated as Agriculture

a. Prohibit the conversion of lands suitable for agriculture within a parcel to Conditionally permitted uses unless all of the following can be demonstrated: (I)all agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable.

t2)continued or renewed agricultural use of the soils is not feasible as defined by Section 30108 of the Coastal Act,

(3)Clearly defined buffer areas are developed between agricultural and non agricultural uses.

(4) The productivity of any adjacent agricultural lands is not diminished,

(5)public service and facility expansions and permitted uses do not impair agricultural viability, including by increased assessment costs or degraded air and water quality.

b. For parcels adjacent to urban areas. permit conversion if the viability of agricultural uses is severely limited by conflicts with urban uses. the conversion of land would complete a

logical and viable neighborhood and contribute to the establishment of a stable limit to urban development and conditions. (3) (4) and (5) in subsection a are satisfied.

5.1 Maximum Density of Development Per Parcel

a.. Limit non-agricultural development densities to those permitted in rural areas of the coastal zone under the Locating and Planning New Development Component.

b. Further limit non-agricultural development densities to that amount which can be accomodated without adversely the viability of agriculture.

c. In any event. allow the use of one density credit on each legal parcel.

d. A density credit bonus m ay be allowed for the merger of contiguous parcels The

maximum bonus shall be calculated by (1) determining the total number of density credits on all parcels included in a master development plan. (2) multipying that total by 25% if the merger is entirely of parcels of 40 acres of less or by 10% if some or all of the parcel combined are larger than 40 acres.

The merged parcel shall be entitled to the number of density credits on the separate parcels prior to merger plus the bonus calculated under this subsection. The total number of density credits may be used on the merged parcel. Once a parcel or portion of a parcel has been part of a merger for which bonus density credit has been given under this subsection no bonus credit may be allowed for any subsequent merger involving that parcel or portion of a parcel.

e. Density credits on parcels consisting entirely of prime agricultural land, or of prime agricultural land and land which is not developable under the local coastal program, may be transferred to other parcels in the Coastal Zone, provided that the entire parcel from which credits are transferred is restricted permanently to agricultural use by an easement granted to the county or other governmental agency. Credits transferred may not be used in scenic corridors or on prime agricultural lands. they may be used only in accordance with the policies and standards of the Local Coastal Program.

5.12 Minimum parcel size for agricultural parcels.

Determine minimum parcel sixes on a case by case basis to ensure maximum existing or potential agricultural productivity.

5.13 Minimum Parcel Size for Non Agricultural Parcels.

a. Determine minimum parcel size on a case by case basis to ensure that domestic well water and on site sewage disposal requirements are met. b. Make all non agricultural parcels as small as practicable (residential parcels may not exceed 5 acres) and cluster them in one or as few clusters as possible.

5.14 Master Land Division Plan

a. In rural areas designated as agriculture on the Local Coastal Program Land Use Plan Maps on March 25, 1986, require the filing of a Master Land division Plan before the division of any parcel. The plan must demonstrate: (1) How the parcel will ultimately be divided, in accordance with permitted maximum density of development, and (2) which parcels will

be used for agricultural and non agricultural uses. If conversion to those uses are permitted. Division may occur in all phases. All phased divisions must conform to the Master Land Division Plan.

b. Exempt land divisions which solely provide affordable housing, as defined in Policy 3.7 on March 25, 1986, from the requirements in a.

c. Limit the number of parcels created by a division to the number of density credits to which the parcel divided is entitled, prior to division, under Table 1.3 and Policy 5.11 d. and e., except as authorized by Policy 3.27 on March 25, 1986.

5.15 Mitigation of Land Use Conflicts

a. When a parcel on or adjacent to prime agricultural land or other land suitable for agricultural is subdivided for non-

agricultural uses require that the following statement be included, as a condition of approval, on all parcel and final maps and in each parcel deed: "This subdivision is adjacent to property utilized for agricultural purposes. Residents of the subdivision may be subject to inconvenience or discomfort arising from the use of agricultural chemicals, including herbicides, pesticides, and fertilizers, and from the pursuit of agricultural operations, including plowing, spraying, pruning and harvesting, which occassionly (sic) generate dust, smoke, noise, and odor. San Mateo County has established agriculture as a priority use on productive agricultural lands, and residents of adjacent property should be prepared to accept such inconvenience or

discomfort from normal, necessary farm operations."

b. Require the clustering of all non-agricultural development in locations most protective of existing or potential agricultural uses.

c. Require that clearly defined buffer areas be provided between agricultural and non-agricultural uses.

d. Require public agencies owning land next to agricultural operations to mitigate rodent, weed, insect, and disease intestation, if these problems have been identified by the County's Agricultural Commissioners.

5.16 Easements on Agricultural Parcels

As a condition of approval of a Master Land Division Plan, require the applicant to grant to the County (and the County to accept) an easement containing a

covenant, running with the land in perpetuity, which limits the use of the land covered by the easement to agricultural uses, non-residential development customarily considered accessory to agriculture, and farm labor housing. The easement shall specify that, anytime after 3 years from the date of recordation of the easement. Land within the boundaries of the easement may be coverted to other uses consistent with open space (as defined in the California Open Space Lands Act of 1972 on January 1, 1980) upon a finding that changed circumstances beyond the control of the land owner or operator have rendered the land unusable for agriculture and upon approval by the State Coastal Commission of a Local Coastal Program amendment changing the land use designation to Open

Space. Uses consistent with the definition of open space shall mean those uses specified in the Resource Management Zone (as in effect on November 18, 1980). Any land use allowed on a parcel through modification of an agricultural use easement shall recognize the site's natural resources and limitations. Such uses shall not include the removal of significant vegetation (except for renewed timber harvesting activities consistent with the policies of the Local Coastal Program), or significant alterations to natural landforms.

5.22 Protection of Agricultural Water Supplies

Before approving any division or conversion of prime agricultural land or land suitable for agriculture require that:

a. All non-agricultural uses permitted on a parcel demonstrate the existing availability of a potable and adequate on-site water source.

b. Adequate water supplies for agricultural production and sensitive habitat protection in the watershed are not diminished.

c. All new non-agricultural parcels are severed from land bordering a stream and their deeds prohibit the transfer of riparian rights.

SENSITIVE HABITATS COMPONENT

GENERAL POLICIES

The County will:

7.1 Definition of Sensitive Habitats

Define sensitive habitats as any area in which plant or animal life or their habitats are either rare or especially valuable and any area which meets one of

the following criteria: (1) habitats containing or supporting "rare and endangered" species as defined by the State Fish and Game Commission, (2) all perennial and intermittent streams and their tributaries, (3) coastal tide lands and marshes, (4) coastal and offshore areas containing breeding or nesting sites and coastal areas used by migratory and resident water associated birds for resting areas and feeding, (5) areas used for scientific study and research concerning fish and wildlife, (6) lakes and ponds and adjacent shore habitat, (7) existing game and wildlife refuges and reserves, and (8) sand dunes.

7.3 Protection of Sensitive Habitats

a. Prohibit any land use or development which would have significant adverse impact on sensitive habitat areas.

b. Development in areas adjacent to sensitive habitats shall be sited and designed to prevent impacts that could significantly degrade the sensitive habitats. All uses shall be compatible with the maintenance of biologic productivity of the habitats.

7.4 Permitted Uses in Sensitive Habitats

a. Permit only resource dependent uses in sensitive habitats. Resource dependent uses for riparian corridors, wetlands, marine habitats, sand dunes, sea cliffs, and habitats supporting rare, endangered and unique species shall be the uses permitted in Policies 7.9, 7.16, 7.23, 7.26, 7.30, 7.33 and 7.44, respectively, of the County Local Coastal Program on March 25, 1986.

b. In sensitive habitats, require that all permitted uses comply with U.S. Fish

and Wildlife and State Department of Fish and Game regulations.

VISUAL RESOURCES COMPONENT

The County will:

8.15 Structures

Minimize the number of structures located in open fields and grassland areas; require that structures be designed in scale with the rural character of the region, and that they be clustered near existing natural or man-made vertical features.

8.7 Ridgelines and Hilltops

a. Prohibit the location of new development on ridgelines and hilltops unless there is no other buildable area on the parcel.

b. Prohibit the removal of tree masses which would destroy the silhouette of ridgeline or hilltop forms.

c. Restrict the height of structures to prevent their projection above ridgeline or hilltip silhouettes.

d. Prohibit land division which would create parcels whose only building site would be on ridgelines or hilltops.

8.15 Coastal Views

Prevent development (including buildings, structures, fences, un-natural obstructions, signs, and landscaping) from substantially blocking views to or along the shoreline from coastal roads, roadside rests and vista points, recreation areas, and beaches.

8.17 Alternation of Landforms

Minimize the visual degradation of natural landforms caused by cutting, filing, or grading for building sites, access roads, or public utilities by:

a. Concentrating development so that steep hillsides may be left undisturbed.

b. Requiring structures to be designed to fit hillsides rather than altering the landform to accommodate buildings designed for level sites.

c. Prohibiting new development which requires grading, cutting, or filling that would substantially alter or destroy the appearance of natural landforms.

d. Restoring as much as possible the natural topographic contours after any permitted temporary alteration of landforms during construction, timber harvesting, or mineral extraction.

8.18 Location of New Development Require

a. The new development be located, sited, and designed to fit the physical setting, so that its presence is

subordinate to the pre-existing character of the site, enhances the scenic and visual qualities of the area, or maintains the natural characteristics of existing major water courses, established and mature trees or dominant vegetative communities.

b. That roads, buildings, and other structural improvements be constructed to fit the natural topography and to minimize grading and modification of existing landforms.

c. That private roads and driveways be shared, where feasible, to reduce the amount of grading, cutting and filling required to provide access.

d. That all development mimimize the impacts of noise, light, glare and odors on adjacent properties and the community at large.

Section 4. Rural Area Designation

a. For purposes of this ordinance, "rural areas" are areas outside the urban/rural boundary, as drawn on the Local Coastal Program Land Use Plan Maps in effect on March 25, 1986, that were designated Agriculture, General Open Space, Timber Preserve or Public Recreation on those maps on that date. Rural areas designated as General Open Space on those maps on that date shall be deemed "open space on the Land Use Plan Maps" for purposes of Policy 1.9 a.

b. Rural areas shall be regarded as zoned Planned Agricultural District, Resource Management, or Timberland Preserve for purposes of Section 3, Table 1.3 if they were zoned Planned Agricultural District, Resource Management/Coastal Zone, or Timberland

Preserve Zone/Coastal Zone on March 25, 1986.

Section 5. Restriction of Onshore Oil Facilities

Policies 4.23b, 4.24 and 4.27 of the Local Coastal Program on March 25, 1986, regarding onshore facilities for offshore oil and gas exploration and production, are limited to those situations, if any, in which state or federal law requires that onshore facilities be permitted. Policies 4.29-4.37 shall apply to pipelines for the transmission of offshore oil and gas only to the extent that the County must permit those pipelines under state or federal law.

Section 6. Exceptions to Policies

Exceptions and exemptions provided in the Local Coastal Program on March 25, 1986, to the Policies in Section 3 shall be

permitted, except to the extent otherwise provided by this ordinance. These exceptions and exemptions may be deleted or restricted by the Board of Supervisors, but they may not be increased, expanded or otherwise altered.

Section 7. Conflict with Other Provisions

In case of conflict with other policies of the Local Coastal Program or other county plans, ordinances, regulations or policies, the provisions of this ordinance shall govern.

Section 8. Nonapplicability of Provisions

The provisions of this ordinance shall not be applicable to the extent, but only to the extent that they would violate the constitution or law of the United States or the State of California.

Section 9. County Government Responsibilities

a. The Board of Supervisors and other officials and employees of the County Government are mandated by the citizens of the County to apply and enforce the provisions and ordinance and the Local Coastal Program generally, except to the extent that application of any provision is determined by a valid and final order of the California Coastal Commission to violate the California Coastal Act of 1976, or is determined by a valid order of a court to violate the Constitution or law of California or the United States.

b. The Board of Supervisors shall submit any amendments to the Local Coastal Program by this ordinance, which require approval, to the California Coastal Commission, not later than 60 days after

the ordinance becomes effective, in an appropriate manner with necessary supporting documents and information.

Section 10. Repeal or Amendment of Ordinance

a. This ordinance may be repealed or amended only by a majority of the voters of San Mateo County voting in a valid election. The Board of Supervisors may, by four-fifths vote, after consideration by the County Planning Commision, submit proposed amendments to the voters.

b. Amendments to the Local Coastal Program with respect to Farm Labor Housing AReas do not require voter approval, but this exception to voter approval shall be limited to areas whose designation as a Farm Labor Housing Area was approved by the County Planning Commission prior to March 25, 1986.

Section 11. Severability

If any provision or application of any provision of this ordinance is held unconstitutional or violative of any state or federal law the invalidation shall not affect the validity or operative effect of any other provision or any other application of any provision. To this end the provisions and applications of the provisions of this ordinance are severable and would have been enacted even though other provisions or applications are held unconstitutional or otherwise violative of law.

ORDER DENYING REVIEW
AFTER JUDGMENT BY THE COURT OF APPEAL
First Appellate District, Div. 3, No. A041769

S011059
IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

IN BANK

DONALD M. LAYNE, et al., Appellants

v.

SUPREME COURT
FILED
8/23/89
Robert Wandruff,
Clerk

COUNTY OF SAN MATEO, et al., Respondents.

Appellant's petition for review DENIED.

LUCAS
Chief Justice

COURT OF APPEAL OF THE STATE OF CALIFORNIA

IN AND FOR THE
FIRST APPELLATE DISTRICT
DIVISION 3

LAYNE, DONALD & LAURA
vs.
COUNTY OF SAN MATEO, Etc.
et al.
A041769
San Mateo County No.
321065

FILED
6/20/89
Court of Appeal
1st App. Dist.
Ron D. Barrow

BY THE COURT:

The petition for rehearing is denied.

Dated: June 29, 1989 White, P.J.

No. 89-823

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1989

DONALD M. LAYNE AND LAURA J. LAYNE,
Petitioners,
vs.
COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND CALIFORNIA COASTAL COMMISSION
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE COURT OF APPEAL OF CALIFORNIA
FIRST APPELLATE DISTRICT, DIVISION THREE

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

(1) Whether petitioners' just compensation claim was properly dismissed on ripeness grounds, given their failure to submit even one meaningful application for the development of their property.

(2) Whether, in rejecting petitioners' claim that the state statute generally describing the inland boundaries of the California Coastal Zone is unconstitutionally vague, the court below properly concluded that any ambiguity in the statute was eliminated by the Legislature's incorporation by reference of maps precisely defining the location of this boundary.

(3) Whether petitioners' equal protection challenge to Measure A was properly dismissed on ripeness grounds, given the trial court's discretionary authority to refuse to consider applications for declaratory relief when a declaration is not "necessary or proper at the time under all the circumstances" (Cal. Code Civ. Pro. § 1061).

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No. 89-823
IN THE
SUPREME COURT OF THE UNITED STATES

October Term, 1989

DONALD M. LAYNE AND LAURA J. LAYNE,
Petitioners,
vs.
COUNTY OF SAN MATEO, STATE OF CALIFORNIA AND CALIFORNIA COASTAL COMMISSION
Respondents.

RESPONDENTS' BRIEF IN OPPOSITION

Respondents State of California and California Coastal Commission respectfully request that this Court deny the petition for writ of certiorari seeking review of the California Court of Appeal's unpublished opinion in *Layne v. County of San Mateo,* No. A041769.

JURISDICTION

Petitioners invoke the jurisdiction of this Court under 28 U.S.C. §1257 (2) and (3). Jurisdiction exists, if at all, however, only under 28 U.S.C. §1257(a) (formerly §1257(3)), pertaining to writs of certiorari, the old section authorizing appeal (former § 1257(2)), having been eliminated by the Supreme Court Case Selections Act (Public Law 100-352), which took effect on September 25, 1988. 1988 U.S. Code Cong. and Admin. News, p. 766.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

In addition to the Fifth and Fourteenth Amendments to the United States Constitution, sections 17 and 30103 of the California Coastal Act of 1976, and the local initiative ordinance known as Measure A, all of which are cited by petitioners, this case involves the Planned Agricultural District or "PAD" zoning ordinance enacted by the County of San Mateo in furtherance of the Coastal Act. The key provisions of this ordinance are reprinted in the Appendix to this brief.

STATEMENT OF THE CASE

A. Proceedings Below

The complaint filed by petitioners Donald M. and Laura J. Layne, on July 29, 1987, against respondents, County of San Mateo (County), State of California, and the California Coastal Commission (Commission) includes three claims. The first, a claim for damages in inverse condemnation, alleges that the regulations governing development in the San Mateo coastal zone so restrict petitioners' ability to develop their property as to accomplish a taking in violation of the "Just Compensation" Clause (see U.S. Const. 5th & 14th Amends.; Cal. Const., art. I, § 19). (CT 1-3. [1]) The second seeks a declaration that the Laynes' property is not located in the coastal zone and so is not subject to the challenged regulations. (CT 3-5.) The third, also for

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1. The initials "CT" refer to the "Joint Appendix In Lieu of Clerk's Transcript" filed in the Court of Appeal.

declaratory relief, contains a conclusory allegation challenging the constitutionality of the entirety of both the San Mateo Local Coastal Plan and Measure A on vagueness grounds and further alleges that Measure A violates a number of other statutory and constitutional provisions. (CT 6-8). [2/]

On March 4, 1988, the superior court granted a summary judgment in favor of respondents, dismissing petitioners' first and third causes of action on ripeness grounds, and the second on the merits, which judgment the petitioners promptly appealed. (CT 528, 565, 589.)

In an unpublished opinion filed May 30, 1989, the Court of Appeal for the First Appellate District, Division Three concluded that "[t]he trial court properly granted respondents' motion[s] for summary judgment on all three causes of action" and affirmed the judgment in its entirety. (Pet.App. at 31.) The court denied a timely petition for rehearing on June 29, 1989. Thereafter, on August 23, 1989, the Supreme Court of California denied a petition for review and, on November 21, 1989, petitioners timely filed their petition for writ of certiorari in this Court.

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2. Petitioners' equal protection challenge to Measure A has been treated as if were included in their third cause of action, although it is not. This claim was raised for the first time in the trial court in their opposition to respondents' motions for summary judgment. (See CT 214.) Under California law, a court is entirely justified in refusing to entertain such a delayed claim. See, e.g., *Cullincini v. Deming*, 53 Cal.App.3d 908, 915 at n. 5 (1975); *Keniston v. American Nat'l Ins. Co.*, 31 Cal.App.3d 803, 812 (1973), *Alameda Conservation Ass'n v. Alameda*, 264 Cal.App.2d 284, 289 (1968).

B. Statement Of Facts

1. The Regulatory Framework

The Coastal Act of 1976 (Cal. Pub. Resources Code, § 30000 et seq.) [3/] was enacted by the Legislature as a comprehensive scheme to govern land use planning along the entirety of the California coastal zone. Recognizing that the coastal zone "is a distinct and valuable natural resource," the protection of which is of "paramount concern" to both the "state and the nation," the Legislature concluded that it was necessary to enact legislation that would "prevent its deterioration and destruction" but at the same time allow that further "carefully planned" development so "essential to the economic and social well-being of the people of this state." (§ 30001.)

Both local land use planning and enforcement as well as the continuing oversight of the California Coastal Commission are relied upon to achieve these goals. All local governments lying in whole or in part within the coastal zone must prepare and submit to the Commission a local coastal plan (LCP) (§ 30500 (a)). The LCP includes the government's land use plan, implementing zoning ordinances, and zoning district maps for that portion of the coastal zone within its bounds (§ 30108.6). Once certified by the Commission, it provides the framework for regulating development within this area (see §§ 30600 (a) & (d); 30604 (b)).

San Mateo's LCP was certified by the Commission in

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3. Unless otherwise indicated, all further statutory references are to the California Public Resources Code.

October 1980 and went into effect in April 1981 (CT 105-106). The land use policies relevant to plaintiffs' property are set forth in the agriculture component of the LUP. The zoning regulations which implement those policies are contained in the county's Planned Agricultural District (PAD) ordinance. (CT 58, 93, 336.) [4/]

Under the county's program, development of agricultural lands is regulated through controls on both the nature and density of allowable uses. The uses allowed, as of right or pursuant to permit, on land classified as prime agricultural land include: (1) agriculture; (2) non-residential development customarily considered accessory to agricultural uses, such as barns, sheds, stables, and the like; (3) greenhouses and nurseries; (4) repairs and additions to existing single family residences; (5) single family residences; (6) farm labor housing; (7) public recreation (i.e., shoreline access trails); and (8) on-shore oil and gas exploration, production and minimum necessary related storage. (CT 107-108; LUP Policy No. 5.5; PAD §§ 6352, 6353.)

On land classified as merely suitable for agriculture, the uses allowed include, in addition: (9) commercial recreation, such as country inns, stables, and riding academies; (10) wineries; (11) multi-family residences, if for affordable housing; (12) schools; (13) fire stations; (14) aquaculture activities; (15) timber harvesting and commercial wood lots; (16) agriculture processing plants;

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4. For the full text of the Agricultural Component of the LUP and of the PAD ordinance, see CT 144-153 and CT 154-170. The provisions of PAD ordinance cited herein are reprinted verbatim in the Appendix.

(17) dog kennels and breeding facilities; (18) dairies; and (19) uses ancillary to agriculture. (CT 107-108; LUP Policy No. 5.6; PAD §§ 6352, 6353.)

The maximum density of residential or non-agricultural development permissible on a given owner's property is primarily a function of the maximum number of separate legal parcels into which his property may be further divided. (CT 109; PAD §§ 6351.J, 6356.) This, in turn, is a function of the number of density credits attributable to the property, each density credit being the equivalent of one new parcel. (Ibid.) [5/]

A sliding scale density analysis -- which takes into account such things as the amount of prime agricultural soils, the land's location relative to all weather roads, fault zones and the like, its slope, and its susceptibility to land slides -- is used to determine the total number of density credits attributable to any given property. (PAD § 6356.) As a general rule, the greater the number and severity of these constraints, the lower the development potential (CT 109). However, all legal parcels -- no matter how small --are entitled to at least one such credit, and larger parcels may accumulate anywhere from one credit per 40 acres to one credit per 160 acres (CT 109; PAD § 6356). For example, the owner of a 160 acre parcel would be entitled to at least one and possibly as many as 4 density

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5. There are two exceptions to these rules: (1) farm labor housing is allowed without limit upon a showing of need; and (2) a property owner may build up to four dwellings intended for low to moderate income persons or families, without regard to the number of density credits attributable to his property. (CT 109; LUP Policy No. 3.26; PAD § 6356.)

credits, and, since each credit equals a new parcel on which, for example, a new single family residence may be built, this means that he could build between one and four new single family residences on his land (CT 109). And owners like petitioners, who have both a 160 acre parcel and a contiguous 112 acre parcel, could build between two and seven new single family dwellings.

2. Measure A

Measure A is an initiative ordinance adopted by County voters in November 1986 (CT 77-78) which contains 48 minor and 5 major amendments to the land use portion of the County's LCP.

The major amendments provide for: (1) allowance of additional land uses in rural areas; (2) bonus density credits for the creation of new agricultural water storage improvements; (3) transfer of density credits for parcels whose only developable area is completely covered by prime agricultural land; (4) voter approval of amendments to certain identified policies, where the effect of the proposed amendment would be to make the policy less restrictive; and (5) extension of the existing policy on on-shore energy facilities to prohibit the development on-shore of facilities to serve off-shore gas, as well as oil, facilities. (See Request for Judicial Notice On Appeal, Item 1, pp. 2-3.) [6/]

The minor amendments generally consist of non-substantive editorial changes to existing land use policies and/or a revision identifying the policy as one to which

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6. The Court of Appeal issued an order granting this request (hereafter "Request for Judicial Notice) on November 8, 1988.

the major amendment concerning voter approval would apply. (Request for Judicial Notice, Item 2, at p. 2.) [7]

The County submitted the measure to the Commission for certification soon after its enactment (see § 30514), but because of a noticing defect, it was not formally filed until March of 1987 (CT 248). At its December, 1987 meeting, the Commission approved both the 48 minor amendments and the major amendment generally prohibiting development of on-shore facilities to serve off-shore gas development but rejected the four remaining major amendments. The measure was then returned to the County along with suggested modifications to the rejected amendments which, "if adopted and transmitted" to the Commission, could lead to their certification. (Request for Judicial Notice, Item 4, pp. 1-3; § 30512(b).)

Following hearings held on January 19 and February 2, 1988, the County decided to accept the Commission's certification of the 48 minor amendments and one major amendment approved as submitted, and to accept two of the four remaining major amendments as modified, but resolved to send the other two -- i.e., the bonus density and density transfer amendments -- back to the Commission with a request that they be approved in the form originally submitted (Request for Judicial Notice, Items 2; 3; and 4, p. 2.).

This was done on February 8, 1988. (Request for Judicial Notice, Item 3.) The Commission heard the matter at its March 22, 1988 meeting, and, by a split vote,

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7. For the full text of Measure A, see CT 79-88. Measure A is also reprinted in Petitioners' Appendix, at pages 32-92.

granted the County's request. (Request for Judicial Notice, Item 5.)

Certification of Measure A by the Coastal Commission thus was not completed until some 18 days after the trial court granted summary judgment in this case.

3. Petitioners' Property

The undisputed, material facts regarding petitioners' property may be summarized as follows.

(a) Description

During the last quarter of 1978, petitioners purchased approximately 272 acres of land lying along Purissima Creek Road in San Mateo County (CT 1, 334-335). Their lands are located between 1-1/2 to 2 miles inland from the sea (CT 1, 321), and lie within the coastal zone, as that zone is depicted on the maps adopted by reference by the Legislature (CT 4, 335).

None of petitioners' lands are "significant estuarine, habitat, or recreational areas" and all lie "inland" of "the first major ridgeline paralleling the sea" (CT 4).[8/] Finally, their property is "ideal" for residential use (CT 321).

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8. Defendants stipulated to the truth of these allegations solely for purposes of their summary judgment motions (CT 231; Reporters Transcript for January 6, 1988 Hearing on Defendants' Motions for Summary Judgment, p. 2 et seq.). Although petitioners have suggested otherwise, this is an entirely proper procedure under California law. (See, e.g., *Rowe v. Wells Fargo Realty* 166 Cal.App.3d 310 (1985); *Barnett v. Delta Lines, Inc.* 137 Cal.App.3d 674, 682 (1982); *Sparks v. City of Compton* 64 Cal.App.3d 592 (1976)).

(b) Permit History

Petitioners have applied for only one coastal development permit since they bought their property (CT 336, 337). This occurred in 1978 when they applied for a permit to place a mobile home on their property to house farm labor (CT 336). The regional Coastal Commission granted their application and issued the permit (76, 94, 336). It has since been renewed by the County, most recently on October 15, 1987 (CT 94). In addition, leaseholders of 27.8 acres of petitioners' property applied, in 1981, for a coastal development and stable permit to locate a commercial horse training operation on their acreage. The County approved their application in 1982 and granted an extension on the permit in 1983 (CT 76-77, 336).

In 1984, petitioners asked the County to determine the number of existing legal parcels contained within their 272 acres (CT 77, 337). The County informed them that their property presently consists of only two such parcels, one containing approximately 160 acres and one containing approximately 112 acres. The County explained that they might be able to subdivide their property but that a density analysis would be required to determine the exact number of potential parcels and enclosed with the letter "an application, fee schedule, and a copy of the PAD ordinance explaining how density is determined on large parcels." (CT 77, 101-102.)

Despite this invitation, petitioners did not apply for a density credit determination until December 20, 1987, almost 5 months after this action was filed. (CT 320.)

The County did not complete the analysis until after defendants motions for summary judgment were heard.

(See Reporters Transcript for March 1, 1988 Hearing on Plaintiffs' Motion to Vacate, p. 2 (hereafter "RT").) However, the results of its analysis were reported to the court before judgment was entered (RT 2; CT 565). The County concluded that their property was entitled to no more than four density credits. (RT 2, 4; CT 556.) "The number of density credits" attributable to their property can, however, still be decreased "depending on site specific factors." (CT 323.)

REASONS WHY THE PETITION SHOULD BE DENIED

I.

PETITIONERS' JUST COMPENSATION CLAIM DOES NOT PRESENT A SUBSTANTIAL FEDERAL QUESTION: THE COURT BELOW CORRECTLY APPLIED SETTLED FEDERAL PRECEDENT IN REJECTING THIS CLAIM ON RIPENESS GROUNDS

Petitioners' just compensation claim constitutes a misguided attempt to take advantage of the United States Supreme Court's holding, in *First English Evangelical Lutheran Church of Glendale v. Los Angeles County*, 482 U.S. 304 (1987), that a regulatory taking requires payment of just compensation, even if the taking is temporary. Unfortunately, in their rush to the courthouse, petitioners failed to stop and consider whether they had a ripe claim. As the court below correctly recognized, settled federal precedent establishes that they do not.

This Court has confronted questions concerning the ripeness of regulatory taking claims on several occasions in recent years, and its decisions in those cases precisely define the circumstances that must be present before a court may properly entertain such a claim. See *Agins v. Tiburon*, 447 U S. 255 (1979) (hereafter *Agins* (U.S.); *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985) (hereafter *Williamson*); *MacDonald, Sommer & Frates v. Yolo County*, 477 U.S. 340 (1986) (hereafter *MacDonald*).

As this Court has explained on numerous occasions, the central question posed by such claims is whether the regulation at issue goes "too far." However, as a general rule a court cannot know just how far a regulation goes until it has been applied; that is, until the appropriate planning authorities have made a final and authoritative decision regarding "the **type and intensity** of development legally permitted on the subject property." Consequently, a regulatory taking claim brought in advance of such decision is ordinarily premature. *MacDonald*, *supra*, 477 U.S. at 348 (emphasis added); accord *Williamson*, *supra*, 473 U.S. at 187; *Agins*(U.S.), *supra*, 447 U.S. at 260.

The sole exception to this rule occurs in those rare cases where it is evident on a regulation's face that it goes "too far"; that is, where there is no possibility that the regulation can be constitutionally applied. *Agins* (U.S.), *supra*, 447 U.S. at 260; *Lake Nacimiento Ranch v. San Luis Obispo County* 830 F.2d 977, 981-982 (9th Cir.), mod. 841 F.2d 872 (9th Cir. 1987); *Martino v. Santa Clara Valley Water Dist.* 703 F.2d 1141, 1146-1147 (9th Cir.), *cert. denied*, 464 U.S. 847 (1983). Claimants, however, face an "uphill battle in making a facial attack on [a

regulation] as a taking." *Keystone Bituminous Coal Ass'n. v. DeBenedictis*, 480 U.S.470 (1987). In this case, the court below correctly concluded that this hill was fatally steep.

The test to be applied in considering a facial challenge is straightforward. A statute regulating the uses that can be made of property effects a taking only if it does not substantially advance legitimate state interests or denies an owner all economically viable use of his land. *Agins* (U.S.), *supra*, 447 U.S. at 260.

The regulations in issue easily survive scrutiny under this test. That the regulations substantially advance legitimate governmental goals is clear. They are designed to protect the coastal zone -- a distinct and valuable natural resource of importance to both the people of this state and to the nation (§ 30001) -- from the ill effects of unplanned urbanization. Such governmental purpose has long been recognized as legitimate. See *Agins* (U.S.), *supra*, 447 U.S. at 260-262 (approving scenic zoning); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 129 (1978) [approving landmark preservation]; *Ybarra v. City of Los Altos Hills* 503 F.2d 250 (9th Cir. 1974) (approving preservation of the rural environment).

Moreover, petitioners' own declarations establish that the regulations at issue do not prevent beneficial use of their land. They concede that their lands "are ideal for residential development" (CT 321). Given this and the fact that the regulations on their face permit them to build between two and seven new residences on their property, as well as some 18 other possible uses, it quickly becomes evident that they have not been denied all "economically viable use" of their land. (See *Agins* (U.S.),

supra, 447 U.S. at 260; *Lake Nacimiento Ranch v. San Luis Obispo County*, *supra*, 830 F.2d at 981.)

Since the regulations in issue are not facially invalid, plaintiffs inverse claim can be maintained, if at all, only as an "as applied" challenge. As a result, in order to obtain a summary judgment dismissing this claim on ripeness grounds, all respondents had to demonstrate was that the requisite final decision regarding the "**type and intensity**" of development permissible on their property had not been made. Applying settled precedent to the unique facts of this case, the court below correctly concluded that this was no obstacle at all.

To establish such a final decision, a claimant must be able to show: (1) that a development plan he submitted was rejected; and (2) that his subsequent request for a variance was denied. (*Williamson*, *supra*, 473 U.S. at 188; *Kinzli v. City of Santa Cruz*, *supra*, 818 F.2d at 1453; *Lake Nacimiento Ranch Co. v. County of San Luis Obispo*, *supra*, 830 F.2d 977.) Even this will not suffice if the rejected plan was "exceedingly grandiose," since the "[r]ejection of [such a] plan does not logically imply that less ambitious plans will receive similarly unfavorable reviews." *MacDonald*, *supra*, 477 U. S. at 353, n.9; see also *Penn Central Transp. Co. v. City of New York*, 438 U.S. 104, 136-137 (1978).

No extended discussion is required to establish that petitioners have not and can not meet these requirements. No allegation of rejected development plans appears in their complaint, and the undisputed facts establish that there have been none. To the contrary, the only two development proposals submitted for their property were both approved and the necessary permits issued. Thus

they cannot show that the requisite final decision as to the **type** of development permissible on their property has been made.

Nor can they establish the necessary final decision as to the **intensity** of development permissible. Their belated request for a density analysis does not establish this even though they obtained the results prior to entry of the summary judgment. As the declaration of their own witness, the very man "responsible for the introduction of the concept of density analysis into [the] County['s] planning law," reveals, the density analysis which plaintiffs obtained does not constitute a final decision regarding the intensity of development that will actually be permitted on their property: rather "[t]he number of density credits can [still] be decreased depending on site specific factors" (CT 323). Petitioners thus remain very nearly as far from a final determination regarding the intensity of development permissible on their property as they were on the day they filed this suit.

Finally, although petitioners' argued otherwise, the court below, again applying settled federal precedent, properly concluded that petitioners cannot escape their ripeness dilemma by resort to the futility doctrine. This refuge is denied those who, like they, have not filed even one meaningful application for a development project. (*Kinzli v. City of Santa Cruz*, *supra*, 818 F.2d at 1454-1455; *Lake Nacimiento Ranch Company v. County of San Luis Obispo*, *supra*, 830 F.2d 977, 980.)

II

PETITIONERS' VAGUENESS CHALLENGE ALSO FAILS AS A SUBSTANTIAL FEDERAL QUESTION: ANY AMBIGUITY IN THE STATUTE GENERALLY DESCRIBING THE BOUNDARIES OF THE COASTAL ZONE WAS CURED BY THE INCORPORATION OF MAPS SHOWING ITS PRECISE LOCATION.

Subdivision (a) of section 30103 defines the coastal zone as follows:

> 'Coastal zone' *means that land and water area of the State of California* from the Oregon border to the border of the Republic of Mexico, *specified on the maps identified and set forth in Section 17 of that chapter of the Statutes of 1975-1976 Regular Session enacting this division*, extending seaward to the state's outer limit of jurisdiction...and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less and in developed urban areas the zone generally extends inland less than 1,000 yards. . . . (*Emphasis added.*)

Section 17 of chapter 1330 of the Statutes of 1976, as amended by section 29 of chapter 1331 of the Statutes of 1976 (hereafter "Section 17"), in turn provides:

> The coastal zone, *as generally defined* in Section 30103. . . *shall* include the land and water areas as shown on the map prepared by the California Coastal Zone Conservation Commission titled "California Coastal Zone" dated August 11, 1976, and on file with the Secretary of State. (*Emphasis added.*

While petitioners' concede that their property lies within the coastal zone as it is depicted on these maps, they contend that it is not within the coastal zone as it is otherwise, more generally described in section 30103. Accordingly, in a vain attempt to escape the strictures of the regulations in issue, petitioners sought below to have the maps declared invalid under state law or, failing this, a declaration that the alleged conflict between the language of the statute and the boundary shown on the maps renders section 30103 unconstitutionally vague. The lower courts properly rejected both these challenges. Understandably, only the latter challenge is repeated here. As will be seen, however, settled precedent establishes that it is wholly without merit and thus is equally underserving of this Court's attention.

Petitioners' own declarations reveal that their allegation that there is a conflict between the general language of section 30103 and the coastal zone boundary shown on the maps for San Mateo County rests on nothing more than their lay opinion that their property itself is not a significant estuarine, habitat, or recreational area and that

a 120' and an 800' ridgeline lie seaward of their property (See CT 32.)

In truth the only question these facts pose is: whose opinion on the question whether a 120' or an 800' ridgeline is a "*major* ridgeline" within the meaning of the statute and on the question whether their property lies "*in* [a] significant estuarine, habitat, or recreational area" is the dispositive one? The Legislature's or petitioners'? The answer seems evident: it is the Legislature's. It was the legislature that adopted the maps specifically fixing the boundary inland of plaintiffs' property and beyond the 1,000 yard line and it may be presumed that the Legislature had evidence before it that would warrant its action. See generally 58 Cal.Jur.3d, Statutes § 49 (1980). Accordingly, in the absence of any fatal ambiguity in the statute, it seems clear that plaintiffs must do as others have done and take their case for relief there.

Unfortunately for petitioners, no such ambiguity is present here. While certain of the terms used in section 30103 -- such as "first major ridgeline" -- are amenable to more than one interpretation, they are no more ambiguous than many other terms upheld in the face of such challenges

True, due process requires that an enactment be declared void for vagueness if its provisions and requirements are not clearly defined. *Grayned v. City of Rockford*, 408 U.S. 104, 108-109 (1972). But, it is equally true that statutes must be upheld unless their unconstitutionality clearly, positively, and unmistakably appears. See, e.g. *Collins v. Riley*, 24 Cal.2d 912, 915 (1944). For this reason, vagueness challenges are rejected out of hand unless "men of common intelligence must

necessarily guess at [a statute's] meaning and differ as to [its] application." *People v. Smith*, 35 Cal.3d 798, 809 (1984). Reasonable certainty is all that is required; mere difficulty in determining a statute's meaning will not render it nugatory. *People v. Anderson*, 29 Cal.App.3d 551, 561 (1972).

Section 30103 easily passes muster under this standard. Indeed, the requisite "reasonable certainty" necessary to sustain it is provided by its reference to the maps. This reference effectively tells the reader that, in order to understand precisely what the general terms mean, he need only look there.

That this is what the Legislature intended can hardly be disputed. In a formal opinion issued nearly seven years ago, the California Attorney General concluded that the Legislature meant the landward boundary of the coastal zone depicted on the maps to prevail over the generalized description set forth in that section. 63 Ops.Cal.Atty.Gen. 107 (1980). After examining the express language of section 30103 and section 17, the Attorney General found that the language in the former section to the effect that the coastal zone extends generally 1,000 yards from the mean high tide line, or in certain areas five miles from that line or to the first major ridgeline paralleling the sea is "merely descriptive of the rationale used by the Legislature in drawing the particular line on the maps." *Id.*, at 109.

As the opinion notes this conclusion finds support in various other provisions in the Coastal Act concerning the location of the boundary. Subsequent to its approval of the original maps, the Legislature has made several changes in the landward boundaries of the coastal zone.

For example, sections 30150 through 30176 all concern amendments to the inland boundary of the coastal zone at various points along the coast. In each of these instances, the Legislature amended the coastal zone boundary by amending the maps it had previously adopted, not by amending the general description of the coastal zone.

The Legislature's intent to define the coastal zone by its adopted maps -- even where those maps show an interior boundary that is arguably further inland than the boundary that would result from application of the general language set forth in section 30103 -- is further confirmed by its repeated rejection of legislation aimed at moving the inland boundary in the Santa Monica Mountains area seaward to what some contended was the "first major ridgeline paralleling the sea." (See CT 392.)

Principles of statutory construction also suggest that the boundary shown on the maps be the boundary that prevails in cases of conflict with the language of section 30103. The maps describe the boundary more specifically than the descriptive language and, as a general rule, the Legislature's more particularized expressions on a subject prevail over its more general ones. Civ. Code, § 3534; see generally 58 Cal.Jur.3d, *supra*, § 109, at pp. 488-491.

Finally, there no doubt but that giving effect to the maps accords with the legislative intent in this very case. Indeed, petitioners' claim that the Legislature intended to fix the boundary of the coastal zone at the 1,000 yard line in San Mateo County demonstrates only that they have not bothered to review the legislative history of the Act.

One of the more interesting things this history reveals is that, in the final days leading up to the adoption of the Act, **the Assembly specifically rejected a proposed amendment to the Act that would have fixed the boundary of the San Mateo coastal zone at the 1,000 yard line.**

The amendment -- proposed on the floor of the Assembly on August 13, 1976 by Mr. Arnett -- would have changed section 30103 (a) as it now reads by adding at the end of that section the following sentence: "Notwithstanding the foregoing provisions of this section, the coastal zone in San Mateo County shall not extend more than 1,000 yards inland from the mean high tide line of the sea." Assem. Journal (1975-1976 Reg. Sess.) August 13, 1976, p. 19057. However, the amendment was rejected immediately after being read, by a vote of 36 to 29. *Ibid.*

The post-enactment history of the Act is equally instructive. The Legislature amended various segments of the coastal zone boundary in 1979, deleting areas previously incorporated in some instances and adding areas previously excluded in others. See § 30150 (adopting by reference maps showing these adjustments). Although San Mateo County was one of the counties affected by these amendments, it the only change the Legislature made the County's coastal zone boundary was to move it "seaward to the five-mile limit" in the area of the Butano Creek watershed. See Pub. §§ 30150, 30156.

Suffice it to say that the fact that the Legislature has twice refused to avail itself of an opportunity to move the San Mateo boundary seaward to the 1,000 yard line strongly suggests that that is not where it wishes the boundary located. See *People v. Weidert*, 39 Cal.3d 836,

846-847 (1985); *Rich v. State Board of Optometry*, 235 Cal.App.2d 591, 607 (1965).

III

PETITIONERS' EQUAL PROTECTION CHALLENGE TO MEASURE A WAS PROPERLY REJECTED AS UNRIPE.

In their third cause of action, the petitioners' challenged the constitutionality of the *entirety* of both the County's LCP and Measure A on vagueness grounds and the validity of Measure A alone on sundry other grounds. To these claims, they later added yet another constitutional challenge to Measure A founded on the equal protection clause. (See *supra*, fn. 2.) The Court of Appeal affirmed the trial court's dismissal of all of these claims as unripe; it did not reach the merits of any of them, including the equal protection challenge. (See Pet.App., at 29-30.)

This result is entirely proper. As the Court of Appeal noted, "[c]ertification of Measure A by the Coastal Commission was not completed until March 22, 1988, 18 days after the trial court granted summary judgment. The lack of ripeness under these circumstances is obvious." (Pet.App. at 29.)

IV

CONCLUSION

For these reasons, respondents respectfully request that the petition for a writ of certiorari be denied.

DATED: December 21, 1989

Respectfully submitted,

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(Appendices follow)

APPENDIX A

HAPTER 21A. "PAD" (PLANNED AGRICULTURAL DISTRICT).

§ 6351.J. Density Credits

The maximum number of land divisions permitted for a parcel computed in accordance with Section 6356. For Public and Commercial Recreation uses, each density credit equals 630 gallons per day of water. For all other uses, each density credit equals 315 gallons per day of water. Credits may be combined for uses on a single parcel if the number of land divisions permitted is reduced accordingly; however, only one credit shall be assigned to an agricultural parcel. Only one dwelling unit or non-agricultural use shall be permitted per parcel.

§ 6352. USES PERMITTED

The following uses are permitted in the PAD:

A. On Prime Agricultural Lands

1. Agriculture.

2. Non-residential development customarily considered accessory to agricultural uses.

3. Soil dependent greenhouses and nurseries provided that a soil management plan is prepared showing how open prime soils on the site will be preserved and how soils will be returned to their original condition when operations cease.

4. Repairs, alterations, and additions to existing single-family residences.

B. On Land Suitable for Agriculture and Other Lands

1. Agriculture.

2. Non-residential development customarily considered accessory to agricultural uses.

3. Dairies.

4. Greenhouses and nurseries.

5. Repairs, alterations, and additions to existing single-family residences.

§ 6353. USES PERMITTED SUBJECT OT THE ISSUANCE OF A PLANNED AGRICULTURAL PERMIT.

The following uses are permitted in the PAD subject to the issuance of a Planned Agricultural Permit, which shall be issued in accordance with the criteria set forth in Section 6355 of this Ordinance.

Applications for Planned Agricultural Permits shall be made to the County Planning Commission and shall be considered in accordance with the procedures prescribed by the San Mateo County Zoning Ordinance for the issuance of use permits and shall be subject to the same fees prescribed therefore.

A. On Prime Agricultural Lands

1. Single-family residences.

2. Farm labor housing

3. Public recreation/shoreline access trail (see Section 6355.D.3 and 4.).

4. Non-soil dependent greenhouses and nurseries if no alternative building site on the parcel exists.

5. Onshore oil and gas exploration, production, and minimum necessary related storage subject tot he

issuance of an oil well permit, except that no wells shall be located on prime soils.

B. On Lands Suitable for Agriculture and other Lands

1. Single-family residences.

2. Farm labor housing.

3. Multi-family residences if for affordable housing.

4. Public recreation/shoreline access trail (see Section 6355.D.3 and 4.)

5. Schools.

6. Fire stations.

7. Commercial recreation.

8. Aquacultural activities.

9. Wineries: provided that the annual storage capacity shall not exceed 10,000 gallons, the annual fermentation capacity shall not exceed 5,000 gallons, and the annual bottling shall not exceed 2,500 cases of wine; the only retail sales permitted will be those of wines produced on the premises.

10. Timber harvesting and commercial wood lots subject to the issuance of a timber harvesting permit.

11. Onshore oil and gas exploration, production,a nd storage subject to the issuance of an oil well permit.

12. Agricultural processing plants.

13. Uses ancillary to agriculture.

14. Dog kennels and breeding facilities.

15. Scientific/technical research and test facilities,d provided a Planned Agricultural Permit shall only be issued for this use upon the following findings:

a. That the use is of a low-intensity nature with minimum of permanent construction required, no permanent on-site personnel or permanent on-site

vehicles.

b. That the nature of the operation requires an open, isolated, and radio frequency interference-free environment.

c. That no manufacturing or industrial activities are involved.

d. That the size, location and design of any proposed facility as well as level of activity on the site are compatible with the policies of the Local Coastal Plan.

e. That the proposed use does not impair existing or potential agricultural uses on the site or on surrounding properties. The applicant shall demonstrate how agriculture will not be impaired, including provisions for leasing portions of the site for agricultural uses.

f. That the proposed use or facility does not create a potential for any health or safety hazard.

g. That the applicant for such a facility shall describe the manner in which other users might be accommodated in sharing the proposed facility so as to avoid the duplication of such facilities in the future.

h. That the applicant demonstrate that no feasible sites exist in the RM, RM/CZ, TPZ, or TPZ/CZ zones for the proposed facility.

§ 6355. SUBSTANTIVE CRITERIA FOR ISSUANCE OF A PLANNED AGRICULTURAL PERMIT.

It shall be the responsibility of an applicant for a Planned Agricultural Permit to provide factual evidence which demonstrates that any proposed land division or conversion of land from an agricultural use will result in uses which are consistent with the purpose of the Planned

Agricultural District; as set forth in Section 6350. In addition, each application for a division or conversion of land shall be approved only if found consistent with the following criteria:

A. General Criteria

1. The encroachment of all development upon land which is suitable for agricultural use shall be minimized.

2. All development permitted on a site shall be clustered.

3. Every project shall conform to the Development Review Criteria contained in Chapter 20A.2 of the San Mateo County Ordinance Code.

B. Water Supply Criteria

1. The existing availability of a potable and adequate on-site well water source for all non-agricultural uses is demonstrated.

2. Adequate and sufficient water supplies needed for agricultural production and sensitive habitat protection in the watershed are not diminished.

3. All new non-agricultural parcels are severed from land bordering a stream and their deeds prohibit the transfer of riparian rights.

C. Criteria for the Division of Prime Agricultural Land

1. Prime Agricultural Land which covers an entire parcel shall not be divided.

2. Prime Agricultural Land within a parcel shall not be divided unless it can be demonstrated that existing or potential agricultural productivity of all resulting parcels would not be diminished.

3. Prime Agricultural Land within a parcel will not be divided when the only building site would be on

such Prime Agricultural Land.

D. Criteria for the Conversion of Prime Agricultural Lands

Prime Agricultural Land within a parcel shall not be converted to uses permitted by a Planned Agricultural Permit unless it can be demonstrated that no alternative building site exists on a parcel for:

1. A single-family residence.
2. Farm labor housing.
3. A recreation facility on land owned by a public agency before the effective date of this Ordinance, and

a. The agency, as a condition of approval of the Planned Agricultural Permit, executes a recordable agreement with the County that all prime agricultural land and other land suitable for agricultural which is not needed for recreational development or for the protection and vital functioning of a sensitive habitat will be permanently protected.

b. The agency, whenever legally feasible, agrees to lease the maximum amount of agricultural land to active farm operators on terms compatible with the primary recreational and habitat use.

4. A shoreline access trail.
5. Permissible onshore oil and gas exploration, production, and storage facilities.

E. Criteria for the Division of Lands Suitable for Agriculture and Other Lands

Lands suitable for agriculture and other lands shall not be divided unless it can be demonstrated that existing or potential agricultural productivity of any resulting agricultural parcel would not be diminished.

F. Criteria for the Conversion of Lands Suitable for Agriculture and Other Lands

All lands suitable for agriculture and other lands within a parcel shall not be converted to uses permitted by a Planned Agricultural Permit unless all of the following criteria are met:

1. All agriculturally unsuitable lands on the parcel have been developed or determined to be undevelopable, and

2. Continued or renewed agricultural use of the soils is not capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, and technological factors (Section 30108 of the Coastal Act), and

3. Clearly defined buffer areas are developed between agricultural and non-agricultural uses, and

4. The productivity of any adjacent agricultural lands is not diminished, including the ability of the land to sustain dry farming or animal grazing, and

5. Public service and facility expansions and permitted uses do not impair agricultural viability, either through increased assessment costs or degraded air and water quality, and

6. In addition, for parcels adjacent to urban areas, the viability of agricultural uses is severely limited by conflicts with urban uses, and the conversion of land would complete a logical and viable neighborhood and contribute to the establishment of a stable limit to urban development.

§ 6356. MAXIMUM DENSITY OF DEVELOPMENT.

In the Planned Agricultural District, for purposes of determining the maximum total number of density credits accumulated on any parcel, the following system shall be used:

The total parcel shall be compared against the criteria of this Section in the order listed. Any segment of a parcel to which a criterion first applies shall be allowed a maximum accumulation of that density. Once considered under a criterion, a segment of the parcel shall not be considered under subsequent criteria. When the applicable criteria have been determined for each of the areas, any portion of the parcel which has not yet been assigned a maximum density accumulation shall be assigned a density of 1 density credit per 40 acres.

The sum of densities accrued under all applicable categories shall constitute the maximum density of development permissible under this Section. If the fractional portion of the number of density credits allowed is equal to or greater than .5, the total number of density credits allowed shall be rounded up to the next whole density credit. If the fraction is less than .5, the fractional unit shall be deleted. All legal parcels shall accumulate at least 1 density credit.

In order to equate the density accrued for different uses permitted in the PAD, one density credit shall equal 630 gallons/day of water for Public and Commercial Recreation uses, and 315 gallons/day of water for all other uses. Any uses requiring more than 630 or 315 gallons/day of water shall consume the number of additional whole credits needed. When a Master Land Division Plan is approved, more than one density credit may be assigned to a new non-agricultural parcel if the

number of permitted divisions is reduced accordingly; however, only one credit may be assigned to a new agricultural parcel.

The provisions of this Section will not apply to agriculture, farm labor housing, or affordable housing as defined in Policy 3.26 of the Local Coastal Program, or other structures considered to be accessory to agriculture under the same ownership.

A. Prime Agricultural Lands

One density credit for that portion of a parcel which is Prime Agricultural Land as defined in Section 6351. For parcels with less than 160 acres of such land, density accumulation is proportioned on the basis of 1 credit per 160 acres.

B. Lands with Landslide Susceptibility

One density credit for that portion of a parcel which lies within any of the three least stable categories (categories V, VI, and L) as shown on the U.S. Geological Survey Map MF 360, "Landslide Susceptibility in San Mateo County." For parcels with less than 160 acres of such land, density accumulation is proportioned on the basis of 1 credit per 160 acres.

C. Land with Slope 50% or Greater

One density credit for that portion of a parcel which has a slope 50% or greater. For parcels with less than 160 acres of such land, density accumulation is proportioned on the basis of 1 credit per 160 acres.

D. Remote Lands

One density credit per 160 acres for that portion of a parcel over 1/2 mile from an existing, all-weather, through public road which was in existence before the effective date of this Ordinance.

E. Land With Slope 30% But Less Than 50%

One density credit per 80 acres for that portion of a parcel which has a slope in excess of 30% but less than 50%.

F. Lands Within Rift Zones or Active Faults

One density credit per 80 acres for that portion of a parcel which is located within the rift zone or zone of fractured rock of an active fault as defined by the U.S. Geological Survey and mapped on USGS Map MF 355, "Active faults, probably active faults, and associated fracture zones in San Mateo County."

G. Lands Within Floor Hazard Areas

One density credit per 60 acres for that portion of a parcel falling within a Flood Hazard Area in accordance with the provisions of Chapter 35.5 of this Part and using the documents identified in Section 6824.2 of that Chapter, as appropriate. Where previous actions have eliminated such flood areas, the provisions of this subsection shall not apply.

H. Land With Slope 15% But Less Than 30%

One density credit per 60 acres for that portion of a parcel with a slope in excess of 15% but less than 30%.

I. Land Within Agricultural Preserves or Exclusive Agricultural Districts

One density credit per 60 acres for that portion of a parcel within agricultural preserves or the exclusive Agricultural Districts as defined in the adopted Resource Conservation Area Density Matrix policy.

J. All Other Lands

One density credit per 40 acres for that portion of a parcel not within the above areas.

PROOF OF SERVICE BY MAIL

State of California
County of San Francisco

I am a citizen of the United States and a resident of or employed in the City of San Francisco, County of San Francisco; I am over the age of 18 years and not a party to the within action; my business address is 455 Golden Gate Avenue, San Francisco, California 94102.

On December 21, 1989, I served the within Respondents' Brief in Opposition on all parties by placing three true copies thereof enclosed in sealed envelopes, with postage thereon fully prepaid, in the United States Post Office mail box at San Francisco, California, addressed as follows:

DONALD M. LAYNE 200 Clock Tower Place Suite B-103 Carmel, California 93923	MICHAEL B. MURPHY Deputy County Counsel 401 Marshall Street Redwood City, CA 94063
Counsel for Petitioners	Counsel for Respondent County of San Mateo

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 21, 1989, at San Francisco, California.

Susie Fong

SUSIE FONG